United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

76-1011

B
P/S

United States Court of Appeals
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

JOSEPH MAGNANO, a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolot", and a/k/a "Nose", RICHARD BOLELLA, ANTHONY DeLUTRO, a/k/a "Tony West", ANTHONY SOLDANO, a/k/a "Tony",

Defendants-Appellants,

LOUIS MACCHIARGLA, a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO, a/k/a "Donnie Boy", FRANK FERRARO, a/k/a "Skooch", CARMINE MARGIASSO, a/k/a "Charlie", JOSEPH MALIZIA, a/k/a "Patsy Pontiac", ERNEST MALIZIA, FRANK CARAVELLA, JOHN GWYNN, WILLIAM CHAPMAN, a/k/a "Chappy", ST. JULIAN HARRISON, FRANK LUCAS, GERARD CACHOLAN, a/k/a "Coco", ROBERTO RIVERA, and GABRIEL RODRIGUEZ, a/k/a "Cass", a/k/a "Cassanova",

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR APPELLANT, ANTHONY DeLUTRO

H. RICHARD UVILLER
Attorney for Defendant-Appellant, Anthony DeLutro
435 West 116th Street
New York, N. Y. 10027
(212) 280-4160
(914) 534-9202

THOMAS J. CAHILL
United States Attorney
Southern District of New York
Attorney for Appellee
1 St. Andrew's Plaza
New York, New York 10007
971-0055

UNITED STATES COURT OF APPEALS
FILED
MAR 3 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

249 Press of Fremont Payne, Inc., 417 Canal St., N. Y.—966—6570

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12/12/75

JUDGE COOPER

75 CRIM. 687

C. Form No. 100

CRIMINAL DOCKET

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	Dominic F. Amoroso, AUSA
1. JOSEPH MAGNANO, a/k/a "Joe the Grind" 1-4	791-1960
2. FRANK PALLATTA, a/k/a "Bolot", and a/k/a "Nose", 1-4	
3. RICHARD BOLELLA, 1-4	
4. LOUIS MACCHIAROLA, a/k/a "Red Hot", 1-4	
5. MICHAEL CARBONE 1-4	
6. DOMINIC TUFARO, a/k/a "Donnie Boy", 1-4	For Defendant: Stokamer & Epstein
7. FRANK FERRARO, a/k/a "Skooch", 1-4	100 Church Street, NYC 10007
8. CARMINE MARGIASSO, a/k/a "Charlie", 1-4	962 1564 (Richard Bolella)
9. ANTHONY DeLUTRO, a/k/a "Tony West", 1-9	
10. ANTHONY SOLDANO, a/k/a "Tony", 1-9	
11. JOSEPH MALIZIA, a/k/a "Patsy Pontiac", 1-9	
12. ERNEST MALIZIA, 1	
13. FRANK CARAVELLA, 13	
14. JOHN GWYNN, 1, 10, 14, 15, 16	
15. WILLIAM CHAPMAN, a/k/a "Chappy", 1	
16. ST. JULIAN HARRISON, 1-5	
17. FRANK LUCAS, 1, 5-7	
18. GERARD CACHOLAN, a/k/a "Coco", 1-11	
19. ROBERTO RIVERA, and 1-12	
20. GABRIEL RODRIGUEZ, a/k/a "Cass", a/k/a "Cassanova", 1-17	

SIS RECEIVED AND DISBURSED		
NAME	RECEIVED	DISBURSED

(07)
...me,
Clerk,
Marsha

Attorney:

Offense: 21 USC 846, 841, 812, (a)(1)(b)

Consp. to viol. Fed. Narco. Laws (Ct.1)
Dist'r. & possess. w/intent to distr.
Hero'n.I. & Cocaine.II. (Cts.2-17)
(Seventeen Counts)

BEST COPY AVAILABLE

Relevant Docket Entries.

DATE	PROCEEDINGS
7-10-75	Filed indictment.
7-15-75	Deft. Mangano (atty present Edward Panzer) enters plea of not guilty. Bail cont'd
	Deft. Pallatta (atty present Jay Goldberg) enters plea of not guilty. Bail cont'd
	Deft. Bolella (atty present, Gilbert Epstein) enters plea of not guilty. Bail cont'd
	Deft. DeLutro (atty present) Enters plea of not guilty. Bail continued.
	Deft. Soldano (atty present) Robert Blassner Enters plea of not guilty. Bail cont'd.
	Deft. Gwynn (atty present Edward D. Loughman enters plea of not guilty. Bail continued.
	Deft. Chapman (atty present, Reed) Enters plea of not guilty Bail continued.
	Deft. Cachoian(atty not present) Court enters plea of not guilty. Bail continued.
	Deft. Rivera Produced on Writ (atty not present) Court enters not guilty plea.
	(continued on next pg)

75 Cr. 60

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
	Deft. Rodriguez Bench warrant ordered Issued		
	Trial scheduleed Sept 22 , 1975 at 1;00 P.M. .....Cooper, J.		
7-15-75	FRANK LUCAS-Filed Govt's. affidavit for a writ of habeas corpus directed to Warden, Trenton State Prison, Trenton, N.J. Writ issued, ret. 7-28-75.		
7-24-75	Filed Govt's. affidavit & notice of motion for an order sequestering jurors during the trial of this matter.		
7-28-75	Deft. Lucas (atty present) Jeffrey C. Hoffman. Pleads not guilty. Case referred to Judge Cooper. Writ satisfied.....Conner,J.		
7-30-75	ANTHONY DeLUTRO-Filed Second Offender Information.		
7-30-75	WILLIAM CHAPMAN-Filed Second Offender Information.		

Relevant Docket Entries.

7-30-75	ROBERTO RIVERA-Filed Second Offender Information.
7-30-75	ROBERTO RIVERA-Filed Second Offender Information.
7-30-75	FRANK LUCAS-Filed Second Offender Information.
7-31-75	Filed MEMO ENDORSED on Govt's. motion filed 7-24-75. Application for sequestration is denied without prejudice to renewal.....Cooper,J. (mailed notice)
7-25-75	ROBERTO RIVERA-Filed ORDER that the U.S. Marshal for the S.D.N.Y. maintain custody of the defc in the Southern District pending the completion of the trial of this indictment.....Cooper,J.
8-1-75	GERARD CACHOIAN-Filed Second Offender Information.
8-1-75	FRANK LUCAS-Filed OPINION #42898 - Deft's. motion for suppression of evidence is denied.....Cooper,J. (mailed notice)
8-13-75	FRANK LUCAS-Filed writ of habeas corpus directed to Warden, Trenton State Prison, with marshal"s return. Writ satisfied 7-28-75.....Conner,J.

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Relevant Docket Entries

75 Cr. 687

JAO Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Or Judgmnt
8-19-75	ANTHONY SOLDANO-Filed deft's. affidavit & notice of motion for a bill of particulars, discovery & inspection, disclosure & for suppression of evidence, ret. 8-29-75.	
8-25-75	ANTHONY SOLDANO-Filed Govt's. affidavit in opposition to deft's. motion for a bill of particulars & discovery.	
8-21-75	Filed OPINION #42987-Defts', motions for discovery and for a bill of particulars are granted in part & denied in part. The motions of defts. Magnano and Palatta to strike aliases are denied. Defts', Magnano, DeLutro & Palatta's motions for severance are denied. Defts', Lucas, Bolella & Palatta motion for disclosure of agent or informer is denied. Deft. Soldano's. motion to dismiss the indictment is denied.....Cooper,J. (mailed notice)	
9-3-75	FRANK LUCAS-Filed Govt's. affidavit for a writ of habeas corpus directed to Warden, Trenton State Prison. Writ issued, ret. 9-19-75.	
9-3-75	ANTHONY SOLDANO-Filed MEMO ENDORSED on deft's. motion for a bill of particulars, discovery & suppression. Motion granted in part & denied in part.....Cooper,J. (mailed notice)	
9-10-75	Filed Govt's. affidavit for a writ of habeas corpus ad test. for John Vasquez directed to Superintendent, N.Y.S. Dept. of Corrections. Writ Issued, ret. forthwith.	
9-16-75	ANTHONY DeLUTRO-Filed deft's. memorandum of law. (Filed in 75 Cr. 24).	
9-16-75	ANTHONY DeLUTRO-Filed deft's. requests to charge. (Filed in 75 Cr. 24).	
9-18-75	RICHARD BOLELLA-Filed deft's. affirmation & notice of motion for discovery and for a continuance, ret. 9-22-75.	
9-24-75	WILLIAM CHAPMAN-Filed CJA Form 23 - deft's. financial affidavit.	
9-23-75	WILLIAM CHAPMAN-Filed ORDER appointing William Chance, 70 Lafayette St., N.Y.C. 10013 as attorney for deft. in this matter only.....Cooper,J.	
9-30-75	RICHARD BOLELLA-Filed Govt's. affidavit in opposition to deft's. motion for discovery and for a continuance.	
10-1-75	ANTHONY DeLUTRO-Filed ORDER granting custody to the Govt. of sealed Court authorized intercepted wire communications not to be unsealed in the absence of further order of this Court.....Cooper,J.	
10-2-75	RICHARD BOLELLA-Filed MEMO ENDORSED On deft's. motion for discovery filed 9-18-75 The within application has been rendered in its entirety by the Govt's. disclosure in open court on 9-29-75.....Cooper,J.	
10-3-75	Filed Govt's. affidavit & ORDER that John Vasquez be lodged at the Bergen County Jail and transported to and from U.S. Attorney's Office, S.D.N.Y. during the period from 10-3-75 to 10-30-75.....Duffy,J.	
10-3-75	Filed Govt's. affidavit & ORDER that Anthony Maufredonia be lodged at the Bergen County Jail and transported to and from U.S. Attorney's Office, S.D.N.Y. during the period from 10-2-75 to 10-30-75.....Duffy,J.	

Relevant Docket Entries

75 Cr.

Page #4

DATE	PROCEEDINGS	Date Order Judgment
9-22-75	Deft. Gerard Cachoian withdraws his plea of not guilty & pleads guilty to count 11 only. Govt. consents to dismiss count 1. Pre-sentence report ordered. Probation notified. Sentence - Date Open. Present bail condition continued. .....Cooper,J.	
9-22-75	Jury trial begun as to the following defts. Joseph Magnano, Frank Pallatta, Richard Bolella, Anthony DeLutro, Anthony Saldano, John Gwynn, William Chapman, Roberto Rivera & Frank Lucas before Cooper,J. (Oath to jurors, voire dire).	
9-24-75	Trial continued. Jury duly empaneled & Sworn.	
9-25-75	Trial continued. Deft. Roberto Rivera withdraws his plea of not guilty (during trial) & pleads guilty to count 1 only. (Count 12 open). Pre-sentence report ordered. Probation notified. (Sentence date open). Deft. remanded in custody of U.S. Marshals.....Cooper,J.	
9-26-75	Trial continued.	
9-29-75	Trial continued.	
9-30-75	Trial continued. Deft. Lucas bail exonerated & deft. remanded.	
10-1-75	Trial continued.	
10-2-75	Trial continued.	
10-3-75	Trial continued.	
10-6-75	Trial continued. Deft. William Chapman moves to exonerate bail. Motion Granted. no opposition by the Govt.	
10-7-75	ROBERTO RIVERA-Filed deft's. petition to enter plea of guilty with Order - guilty plea accepted.....Cooper,J.	
10-7-75	Trial continued.	
10-8-75	Trial continued.	
10-9-75	Trial continued.	
10-10-75	Trial continued.	
10-14-75	Trial continued.	
10-15-75	Trial continued. Govt. rests.	
10-16-75	Trial continued.	
10-17-75	Trial continued.	
10-20-75	Trial continued.	
10-21-75	Trial continued. All defts. rest.	
10-22-75	Trial continued.	
10-23-75	Trial continued.	
10-24-75	Trial continued & concluded. (Special verdict as to all deft's. attached.) Jury Verdict - Deft. Joseph Magnano guilty on counts 1,2,3 & 4. (jury polled) Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.....Cooper,J. Deft. Frank Pallatta guilty on counts 1,2,3 & 4 (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.....Cooper,J. Deft. Bolella guilty on counts 1 & 4 and jury disagreement on counts 2 & 3. (jury polled). Pre-sentance report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.....Cooper,J. Deft. Anthony DeLutro guilty on counts 1 & 3 (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.....Cooper,J. Deft. Anthony Soldano guilty on counts 1 & 3 (jury polled) Pre-sentence report ordered. Probation notified. Deft. Remanded. Sentence 12-3-75 at 10:00 A.M.....Cooper,J.	

Cont'd. on Page #5

Relevant Docket Entries. 75 Cr.

DATE	PROCEEDINGS
10-24-75	Jury Verdict - Deft. John Gwynn guilty on counts 1,10 & 16. Jury disagreement on counts 14 & 15. Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. remanded. .....Cooper,J. Deft. William Chapman jury disagreement on count 1 (R.O.R. .....Cooper,J. Deft. Frank Lucas guilty on counts 1,5,6 & 7 (jury polled). Pre-sentence report ordered. Probation notified. Sentence 12-3-75 at 10:00 A.M. Deft. Remanded.....Cooper,J.
11-12-75	JOSEPH MAGNANO, et al., - Filed Order that Mr. John Bright & Ms. Sonja Johnson be allowed entrance into the Metropolitan Correctional Center during visiting hours from 12:00 noon to 3:30 p.m. & 4:30 p.m. to 6:30 p.m. for the purpose of consulting with the defts. Joseph Magnano, Frank Balatta & Richard Bolella. Cooper J. (Consented by U.S.Atty.) (mailed notice)
11-20-75	Filed transcript of record of proceedings dated 9-22-75.
11-25-75	RICHARD BOLLELLA, FRANK PALATTA & JOSEPH MAGNANO-Filed defts'. affidavit & notice of motion for an evidentiary hearing to determine if a new trial should be granted and for a judgment of acquittal on counts 2 & 3 as to deft. Bolella, ret. 12-3-75.
11-26-75	ANTHONY DeLUTRO-Filed deft's. affidavit & notice of motion for a new trial and for a judgment of acquittal, ret. 12-3-75.
12-3-75	JOHN GWYNN-Filed deft's. motion for a judgment of acquittal or alternatively for a new trial.
12-3-75	JOHN GWYNN-Filed MEMO ENDORSED on deft's. motion filed 12-3-75. Motion denied in all respects.....Cooper,J. (mailed notice)
12-[illegible]-75	Filed Govt's. affidavit in opposition to defts'. post trial motions for a new trial
12-3-75	ANTHONY DeLUTRO-Filed MEMO ENDORSED on deft's. motion for a new trial and for a judgment of acquittal, filed 11-26-75. Motion denied in all respects...Cooper,J. (mailed notice)
12-3-75	RICHARD BOLLELLA, FRANK PALATTA & JOSEPH MAGNANO-Filed MEMO ENDORSED on defts'. motion for an evidentiary hearing & for a judgment of acquittal, filed 11-25-75 Motion denied in all respects.....Cooper,J. (mailed notice)
12-5-75	RICHARD BOLELLA-Filed true copy of U.S.C.A. Mandate - Deft's. motion dated 10-28-75 for bail pending sentencing is denied. (mailed notice)
12-9-75	ROBERTO RIVERA-Filed Govt's. sentencing memorandum.
12-3-75	RICHARD BOLELLA-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TEN (10) YEARS on each of counts 1 and 4 to run CONSECUTIVELY to each other. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS pursuant to Title 21, U.S. Code, Section 841 to commence upon expiration of confinement.....Cooper,J. Issued commitment 12-9-75.

Relevant Docket Entries.

75 Cr.

	PROCEEDINGS	Date Or Judgment
12-3-75	ANTHONY SOLDANO-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on each of Counts 1 and 9 to run concurrently with each other. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS, pursuant to Title 21, U.S. Code, Section 841, to commence upon expiration of confinement.....Cooper,J. Issued commitment 12-9-75.	
12-3-75	JOSEPH MAGNANO-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on Count 1. FIFTEEN (15) YEARS on Count 2 to run CONSECUTIVELY to sentence imposed on Count 1. FIFTEEN (15) YEARS on Count 3 to run concurrently with sentence on Counts 1 and 2. FIFTEEN (15) YEARS on Count 4 to run concurrently with sentence on Counts 1 and 2. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS to commence upon expiration of confinement, pursuant to (Title 21 Section 841, U.S. Code.)...Cooper,J. Issued commitment 12-10-75.	
12-3-75	FRANK PAPPITTA-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) YEARS on Count 1. FIFTEEN (15) YEARS on Count 2 to run CONSECUTIVELY to sentence imposed on Count 1. FIFTEEN (15) YEARS on Count 3 to run concurrently with sentence on Counts 1 and 2. FIFTEEN (15) YEARS on Count 4 to run concurrently with sentence on Counts 1 and 2. The deft. is placed on SPECIAL PAROLE for a period of THREE (3) YEARS to commence upon expiration of confinement, pursuant to (Title 21 Section 841, U.S.Code)....Cooper,J. Issued commitment 12-10-75	
12-3-75	JOHN GWYNN-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of EIGHT (8) YEARS on each of counts 1,10 and 16 to run concurrently with each other. Deft. placed on SPECIAL PAROLE for a period of THREE (3) YEARS, pursuant to Title 21, U.S.Code, Section 841, to commence upon expiration of confinement. The sentence imposed herein is to run concurrently with the state probation violation.....Cooper,J. Issued commitment 12-10-75.	
12-3-75	ANTHONY DeLUTRO-Filed JUDGMENT & COMMITMENT (atty present) The deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWENTY-FIVE (25) YEARS on each of Counts 1 and 8 to run concurrently with each other. The deft. is placed on SPECIAL PAROLE for a period of SIX (6) YEARS, pursuant to Title 21, U.S. Code, Section 841, to commence upon expiration of confinement.....,Cooper,J. Issued commitment 12-10-75.	
12-10-75	ANTHONY DeLUTRO-Filed deft's. affidavit & notice of motion for reduction of sentence.	
12-10-75	ANTHONY DeLUTRO-Filed deft's. notice of appeal from the judgment of conviction entered on 12-3-75. (Mailed copies to Anthony DeLutro, M.C.C., 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office).	
12-12-75	ANTHONY SOLDANO-Filed deft's. notice of appeal from the judgment of conviction entered on 12-3-75. Mailed copies to Anthony Soldano, 150 Park Row, N.Y.C.10007 and U.S. Attorney's Office.	

Relevant Docket Entries.

Continuation Page 07

	PROCEEDINGS	Date Ord Judgment
12-12-75	RICHARD BOLELLA, FRANK PALATTA & JOSEPH MAGNANO-Filed Defts'. notice of appeal from the judgments of conviction entered on 12-3-75. Mailed copies to Defts. at 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office.	
12-15-75	ANTHONY DeLUTRO-Filed Govt's. affidavit in opposition to deft's. motion for reduction of sentence.	
12-16-75	JOHN GWYNN-Filed deft's. notice of appeal from the judgment of conviction entered on 12-3-75. Copies mailed to John Gwynn, 150 Park Row, N.Y.C. 10007 and U.S. Attorney's Office.	
12-19-75	ANTHONY SOLDANO-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	RICHARD BOLELLA-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	JOHN GWYNN-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	ANTHONY DeLUTRO-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	FRANK PALLATTA-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-19-75	JOSEPH MAGNANO-Filed commitment & entered return. Deft. delivered to Warden, M.C.C., N.Y.C. on 12-3-75.	
12-29-75	RICHARD BOLLELLA-Filed Deft's. affidavit & notice of motion for bail pending appeal.	
12-29-75	JOSEPH MAGNANO & FRANK PALATTA-Filed Defts'. affidavit & notice of motion for bail pending appeal.	
-1-07-76	JOSEPH MAGNANO, FRANK PALATTA, RICHARD BOLELLA & ANTHONY DE LUTRO: Filed Order that deft's . motion for a new trial based on newly discovered evidence is denied.... Cooper,J.(mailed notice)	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
BY [illegible]
Deputy Clerk

G

Indictment.

DA:ko

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JOSEPH MAGNANO, a/k/a "Joe the Grind",
FRANK PALLATTA, a/k/a "Bolot", anda/k/a "Nose",
RICHARD BOLELLA,
LOUIS MACCHIARCLA, a/k/a "Red Hot",
MICHAEL CARBONE,
DOMINIC TUFARO, a/k/a "Donnie Boy",
FRANK FERRARO, a/k/a "Skooch",
CARMINE MARGIASSO, a/k/a "Charlie",
ANTHONY DeLUTRO, a/k/a "Tony West",
ANTHONY SOLDANO, a/k/a "Tony",
JOSEPH MALIZIA, a/k/a "Patsy Pontiac",
ERNEST MALIZIA,
FRANK CARAVELLA,
JOHN GWYN,
WILLIAM CHAPMAN, a/k/a "Chappy",
ST. JULIAN HARRISON,
FRANK LUCAS,
GERARD CACHOLAN, a/k/a "Coco",
ROBERTO RIVERA, and
GABRIEL RODRIGUEZ, a/k/a "Cass", a/k/a "Cassanova",

Defendants.

INDICTMENT

S 75 Cr. 687

The Grand Jury charges:

From on or about the 1st day of January, 1973 and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA a/k/a "Bolot", a/k/a "Nose", FIRHARD BOLELLA, LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Donnie Boy", FRANK FERRARO a/k/a "Skooch", CARMINE MARGIASSO a/k/a "Charlie", ANTHONY DeLUTRO a/k/a "Tony West", ANTHONY SOLDANO a/k/a "Tony", JOSEPH MALIZIA

a/k/a "Patsy Pontiac", ERNEST MALIZIA, JOHN GWYNN, WILLIAM CHAPMAN a/k/a "Chappy", ST. JULIAN HARRISON, FRANK LUCAS, GERARD CACHOIAN a/k/a "Coco", ROBERTO RIVERA, and GABRIEL RODRIGUEZ, a/k/a "Cass", a/k/a "Cassanova", the defendants, and Frank Caravella, Alex Pulphus, Joseph Condella, Jose Ramos, Mario Perna, and Anthony Verzino, named herein as co-conspirators but not as defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly combined, conspired, confederated and agree together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, wilfully and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of the conspiracy and to effect the objects thereof the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about February 1973 defendant ERNEST MALIZIA met co-conspirator Mario Perna at the Evergreen Bar at 4905 Fifth Ave., Brooklyn, New York and had a conversation.

Indictment.

2. In or about February 1973 defendants ERNEST MALIZIA and FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", met in the Bronx, New York and rode in an automobile.

3. In or about March 1973 defendant FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", met defendant ERNEST MALIZIA and co-conspirator Mario Perna at the Raceway Diner in Yonkers, New York and discussed narcotics.

4. In or about March 1973 defendant FRANK FERRARO a/k/a "Skooch" delivered a package containing approximately 2 kilograms of heroin to defendant ERNEST MALIZIA and co-conspirator Mario Perna on Allerton Avenue, Bronx, New York.

5. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna delivered a package containing approximately one-quarter kilogram of heroin to defendant JOHN GWYNN.

6. In or about March, 1973 defendant WILLIAM CHAPMAN a/k/a "Chappy" introduced co-conspirator Mario Perna and defendant ERNEST MALIZIA to defendant ST. JULIAN HARRISON

7. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna paid approximately $20,000 to defendants DOMINIC TUFARO a/k/a "Donnie Boy", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", and FRANK FERRARO a/k/a "Skooch".

8. In or about March, 1973 co-conspirator Mario Perna and defendant ERNEST MALIZIA received a package containing approximately 4 kilograms of heroin from FRANK FERRARO a/k/a "Skooch".

9. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna delivered a package containing approximately 3 kilograms of heroin to defendant ST. JULIAN HARRISON.

10. In or about March, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna paid defendants JOSEPH MAGNANO a/k/a "Joe the Grind", DOMINIC TUFARO a/k/a "Dommie Boy", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", and FRANK FERRARO a/k/a "Skooch" approximately $20,000.

11. In or about April 1973 defendant FRANK LUCAS paid co-conspirator Mario Perna and defendant ERNEST MALIZIA approximately $56,000.

12. In or about April, 1973 defendant ERNEST MALIZIA and co-conspirator Mario Perna delivered a package containing approximately one-eighth kilogram of heroin to defendant GERARD CACHOLAN a/k/a "Coco".

13. In or about September, 1973 co-conspirators Mario Perna and Anthony Verzino and defendant ERNEST MALIZIA met and had a conversation.

14. In or about September, 1973 defendant GERARD CACHOLAN a/k/a "Coco" introduced defendant ROBERTO RIVERA to co-conspirator Mario Perna and defendant ERNEST MALIZIA.

15. In or about September, 1973 co-conspirator Mario Perna delivered a package containing approximately two kilograms of heroin to defendant ROBERTO RIVERA at the Pathmark Shopping Center near Bruckner Boulevard and White Plains Road, Bronx, New York.

Indictment.

16. In or about October, 1973 defendant RICHARD BOLELLA met co-conspirator Mario Perna and had a discussion about reducing the price being paid for the heroin.

17. In or about November 1973 defendants FRANK FERRARO a/k/a "Skooch" and CARMINE MARGIASSO a/k/a "Charlie" delivered a package containing approximately 12 kilograms of heroin to co-conspirator Mario Perna at the Cross County Shopping Center, Yonkers, New York.

18. In or about November, 1973 defendant ANTHONY DeLUTRO a/k/a "Tony West" delivered a package containing approximately 5 kilograms of heroin to co-conspirator Anthony Verzino.

19. On or about December 1st, 1973 co-conspirator Mario Perna and defendant ERNEST MALIZIA delivered a package containing approximately 10 kilograms of heroin to defendant FRANK LUCAS at the Van Cortlandt Motel, Bronx, New York.

20. In or about November, 1973 co-conspirator Anthony Verzino paid defendant ANTHONY DeLUTRO a/k/a "Tony West" approximately $250,000 in two installments.

21. In or about January 1974 defendant ANTHONY SOLDANO a/k/a "Tony", delivered a package containing approximately 3 kilograms of heroin to co-conspirator Anthony Verzino in Queens, New York.

22. On or about January 15, 1974, defendant JOHN GWYNN distributed approximately 148.5 grams of heroin in or near Apartment 5C, 1065 Jerome Avenue, Bronx, New York.

23. On or about February 25, 1974 co-conspirators Frank Caravella and Anthony Verzino possessed approximately 26 pounds of heroin at 1130 Pelham Parkway, Bronx, New York.

24. On or about January 28, 1975, the defendant FRANK LUCAS possessed approximately $584,705 in cash at 933 Sheffield Road, Teaneck, New Jersey.

(Title 21 United States Code, Section 846.)

SECOND COUNT

The Grand Jury further charges:

In or about March 1973 in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", RICHARD BOLELLA, LOUIS MACCHIAROLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Donnie Boy", FRANK FERRARO a/k/a "Skooch", and CARMINE MARGIASSO a/k/a "Charlie" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 2 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

THIRD COUNT

The Grand Jury further charges:

In or about March, 1973 in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", RICHARD BOLLELA, LOUIS MACCHIARCLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Donnie Boy" FRANK FERRARO a/k/a "Skooch" and CARMINE MARGIASSO a/k/a "Charlie" the defendants, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 4 kilograms of heroin.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

FOURTH COUNT

The Grand Jury further charges:

In or about November, 1973 in the Southern District of New York, JOSEPH MAGNANO a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolot", a/k/a "Nose", RICHARD BOLELLA, LOUIS MACCHIARCLA a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO a/k/a "Donnie Boy", FRANK FERRARO a/k/a "Skooch" and CARMINE MARGIASSO a/k/a "Charlie" the defendants, unlawfully, wilfully and knowingly did distribute and

possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 12 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A), and Title 18, United States Code, Section 2.)

FIFTH COUNT

The Grand Jury further charges:

In or about March, 1973 in the Southern District of New York, ST. JULIAN HARRISON and FRANK LUCAS the defendants, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 3 kilograms of heroin.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

SIXTH COUNT

The Grand Jury further charges:

In or about October, 1973 in the Southern District of New York, FRANK LUCAS the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute Schedule I and II narcotic drug controlled substances, to wit, approximately 4 kilograms of heroin and 2 kilograms of cocaine.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A)

Indictment.

SEVENTH COUNT

The Grand Jury further charges:

On or about the 1st day of December, 1973 in the Southern District of New York, FRANK LUCAS the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 10 kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).

EIGHTH COUNT

The Grand Jury further charges:

In or about November, 1973 in the Southern District of New York, ANTHONY DeLUTRO a/k/a "Tony West", the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 5 kilograms of heroin

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A).)

NINTH COUNT

The Grand Jury further charges:

In or about January, 1974 in the Southern District of New York, defendants ANTHONY SOLDANO a/k/a "Tony", and JOSEPH MALIZIA a/k/a "Patsy Pontiac" the defendants, unlawfully, wilfully and knowingly did distribute and possess with

intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 3 kilograms of heroin.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A) Title 18, United States Code, Section 2.)

TENTH COUNT

The Grand Jury further charges:

In or about March, 1973 in the Southern District of New York, JOHNNY GWYNN the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately one-quarter kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

ELEVENTH COUNT

The Grand Jury further charges:

In or about April, 1973 in the Southern District of New York, GERARD CACHOIAN a/k/a "Coco" the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule 1 narcotic drug controlled substance, to wit, approximately one-eighth kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

Indictment.

TWELFTH COUNT

The Grand Jury further charges:

In or about September, 1973 in the Southern District of New York, ROBERTO RIVERA the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately two kilograms of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

THIRTEENTH COUNT

The Grand Jury further charges:

In or about December 1973 in the Southern District of New York FRANK CARAVELLA the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance to wit, approximately one-half kilogram of heroin.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FOURTEENTH COUNT

The Grand Jury further charges:

On or about October 30, 1973, in the Southern District of New York, the defendant, JOHN GWYNN, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, 159.5 grams of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A); Title 18 United States Code, Section 2.)

FIFTEENTH COUNT

The Grand Jury further charges:

On or about the 20th day of December, 1973, in the Southern District of New York JOHN GWYNN, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule II narcotic drug controlled substance, to wit, 151.5 grams of cocaine.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

SIXTEENTH COUNT

The Grand Jury further charges:

On or about the 15th day of January, 1974 in the Southern District of New York, JOHN GWYNN, the defendant, unlawfully, wilfully and knowingly did distribute and possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, 148.5 grams of heroin.

(Title 21, United States Code, Section 812 841(a)(1) and 841(b)(1)(A); Title 18, United States Code, Section 2.)

Indictment.

SEVENTEENTH COUNT

The Grand Jury further charges:

In or about March 1971, in the Southern District of New York, GABRIEL RODRIGUEZ, a/k/a "Cass", a/k/a "Cassanova", the defendant, unlawfully, wilfully and knowingly did possess with intent to distribute a Schedule I narcotic drug controlled substance, to wit, approximately 1/8 kilogram of heroin.

(Title 21, United States Code, Sections 812 841(a)(1) and 841(b)(1)(A).

Foreman

PAUL J. CURRAN
United States Attorney

Extracts of Testimony.

* * * * *

Q Did there come a time when your partnership with Verzino and Malizia secured some pure heroin?

A Yes, sir.

Q When was that?

A Some time in the month of Novmeber.

Q Of what year?

A '73.

Q Would you relate the events leading up to that?

A Yes. I met with Verzino and Malizia at a bar. Golden Gate Restaurant. At that time Malizia told me that Verzino had met and spoke to somebody about the name of Tony WEst who could secure some pure goods for us at a price of approximately $50,000.

Q Who else was present at this conversation?

A Myself, Malizia and Verzino.

Q All right, continue.

A Verzino then said that Tony West had told him he

could get us all the goods we could use, pure goods, if we could come up with the money.

At that time we only had a limited amount of money on hand as we had money tied up in the street and in goods. We decided to collect as much money as we could in order to get as much pure goods as we could from Tony West.

Q What did you do then?

A We put together about $200,000 at that time.

Q Cash?

A Yes, sir.

Q What was then arranged?

A Verzino had made arrangements to meet Tony West for us to go downtown with him to deliver the money to Toney West and get the goods from him.

Q How many kilos of goods did you raise the money for?

A We asked for five kilos of goods but we didn't have the full amount of money but we felt certain that Tony would give us the goods if we went there with enough of the money.

Q What did you do after the money was raised?

A Verzino, myself and Malizia went to a bar on 30th Street and 2nd Avenue.

Q Do you know the name of that bar?

A No, I don't recall.

Q What happened after you got to the bar?

A We sat down and ordered a drink, at which time Verzino said, "I am going to take the money over to Tony West. I'll be back in about 20 minutes or so."

Q Do you know what time of day this was, Mr. Perna?

A It was some time in the evening, maybe around 9 o'clock or so.

Q Did there come a time when Verzino came back?

A Yes, about 20 minutes later.

Q What did he say?

A He said that he said Tony, he gave him the money, Tony asked for the keys to Verzino's car. He said he had given the money and the keys to his car and that he had to go back and stay with Tony at the bar he was in.

Malizia and I then told Verzino that we weren't comfortable in the bar we were in, we were going to move across the street to another bar, another location, 30th Street and 2nd Avenue.

Verzino then left and Malizia and I went across the street to the other bar. About an hour or so later Verzino retjrned and met us in the other bar. He told us everything went well, he had the goods, for me to get in my car and to follow him up to the plant.

Q What then happened?

* * * * *

* * * * *

Mr. Witness, give us the record of your convictions in any court anywhere at any time from the time you were born. Let's be through with it.

THE WITNESS: 1958 I was convicted for an armed robbery in Bronx, New York; 1958 I was convicted here in the Southern District of New York for a narcotics violation. There were consecutive sentences. I served from 1958 to 1972, 15 years in jail. After that I had a conviction in Florida on a cocaine conspiracy. I was convicted in 1974 on that conspiracy.

Q When did you meet Anthony Verzino for the first time?

A 1967 in the Federal House of Detention on West Street.

Q Did there come a time when you and Anthony Verzino and others became partners in a narcotics conspiracy?

A Yes, sir.

Q What role did you play in that conspiracy?

MR. AMOROSA: Which one?

THE COURT: Yes. Identify it specifically and make no mistake about it.

MR. EPSTEIN: The one that he was involved in with Anthony Verzino and others while in federal prison.

MR. AMOROSA: There were two when he testified to that yesterd[illegible]

THE COURT: That is true. Which one?

MR. EPSTEIN: The first one.

THE COURT: Do you understand the question?

THE WITNESS: Yes, sir. The heroin conspiracy?

Q Correct.

A We formed a partnership in the latter part of 1969, the beginning of 1970.

Q What role did you play in this conspiracy involving heroin?

A Only to speak to the Frenchman and then give

whatever information he gave me to Verzino and another person not on trial here, and he in turn made arrangements to have the heroin imported.

* * * * *

* * * * *

Q While you were involved with Anthony Verzino in a conspiracy to possess and distribute heroin while you were in prison, and Atlanta, approximately how much was actually distributed as a result of your and your associates activities?

A Approximately 200 kilos of heroin.

Q Approximately how much income did the sale or the disposition of those 200 kilos generate?

A I would not know.

Q How much money did you make out of it?

A $40,000.

Q And when did you receive your $40,000?

A When I got home.

Q When was that?

A May of 1972.

Q Now, some time after you got home you discussed the involvement that you had in a plan to kill Anthony Verzino, Susan Hahn, who later became Susan Verzino, and a man by the name of Sorsenson. Do you recall that testimony?

A Yes, sir.

Q Who selected you for this particular job of killing those three people?

A I had a discussion with another inmate in Atlanta before I left Atlanta.

Q What was the name of the other inmate in Atlanta?

A Joseph Stassi.

Q And he is the one who hired you, so to speak?

A We were associates; we were partners in a heroin deal.

Q And this is something he wanted you to do?

A Yes, sir.

Q Did you agree to kill these three people, Anthony Verzino, Susan Verzino, and Sorenson?

A Yes, sir.

Q Were you to receive any money for that?

A No, sir.

Q What was to be your gain or your benefit from the death of these three people?

A The possibility of saving myself another term in jail.

Q Now, there came a time, did there not, in May of 1973, when you tried to hire John Condella and a man known to you as Jimmy to kill Anthony Verzino?

A No, sir.

Q When did you try to hire Condella and Jimmy to kill Anthony Verzino?

A Jimmy had nothing to do with me. I never spoke to Jimmy.

Q You spoke to Johnny Condella?

A Yes.

Q When did you speak to him about killing Anthony Verzino?

A January, 1974.

Q How much money were you supposed to give Condella for killing Anthony Verzino?

A There was no money involved.

Q What was the inducement that you offered to Condella and to Jimmy to kill Anthony Verzino?

A Only as a favor to me.

Q Is that the sort of favor you normally request of your friends, to go out and kill another human being?

MR. AMOROSA: Objection.

THE COURT: Objection sustained.

Q You provided the weapons for the murder of Anthony Verzino, did you not?

A Yes, sir.

Q Where did you get the shotgun?

A I got it from a friend of mine. I don't remember

exactly.

Q Where did you get the pistols?

A We had a number of pistolsin what we called the stash.

Q At the time you possessed the shotgun and pistol you were on parole from the penitentiary in Atlanta?

MR. AMOROSA: Objection. We had this yesterday.

THE COURT: Yes, but I am allowing counsel a certain amount of leeway. Counsel repeats and keeps on hammering over details that do notadd anything to the confession, reported confession by the witness, his iniquitous deportment over a sizeable pieriod of time. I don't see what we gain when a man says and admits that he wanted to do away with the life of a human being for the reason that he assigned. I see nothing gained by finding out where the gun was gotten, what the color of the handle was, how many bullets it contained. It means nothing. So just watch that, gentlemen, all of you.

MR. EPSTEIN: Very well.

* * * * *

* * * * *

Q By the way, did you ever in your life see Mr. DeLutro give any heroin to anyone?

A No, sir.

Q Did you ever in your life see Mr. DeLutro receive any money for the purchase of heroin or the sale of heroin from anyone?

A No, sir.

* * * * *

* * * * *

Q You testified that Verzino told you that Tony DeLutro had put some heroin in his car, in Verzino's car, right?

A Yes, sir.

Q Now, that's what I am referring to. You said that was five kilos, some short ten ounces, I believe you said on direct examination?

A Yes, sir.

Q And you took this to the apartment stash on Broadway?

A Yes, sir.

Q You tested this?

A Yes, sir.

Q Or did you give it to Flocko for him to test?

A No, sir.

Q How did you test it?

A With a centigrade thermometer, sir.

Q What did you do?

A You want the complete process?

Q I want to know what you did. I don't want to know any process. What did you do, Mr. Perna?

mdlt 4 Perna-cross

A We put mineral oil into a glass pot, Pyrex pot, on a gas stove, lit the stove, put the thermometer into the oil, the centigrade thermometer, along with a tube containing the heroin, let it come to a boil, not exactly a boil, heat it to a point where the heroin breaks, it melts down and breaks. That is the reading point on the centigrade thermometer.

Q Is that the way -- are you an expert?

A No, sir.

Q Did you perform a color test on thi· heroin?

A No, sir.

Q Do you know what a color test is?

A No, sir.

Q Did you put a chemical into the thermometer?

A No, sir.

Q Well, wouldn't other substances break down equally like heroin, as far as you know?

A I don't know, sir.

Q You don't know?

A No, sir.

Q So you really don't know if it was heroin or not?

A I do know that it was heroin, sir.

Q You thought that it was heroin.

A I know that it was heroin.

Q Now, this alleged heroin that you are referring to, have you got it today?

A No, sir.

Q Did you give any part of it to the United States Attorney?

A No, sir.

Q Did you give any part of it to any Drug Enforcement officer?

A No, sir.

Q Did you get rid of it?

A When I was arrested it was--

Q Did you get rid of it, yes or no?

A I can't answer that question, sir.

Q You were caught with some kilos of heroin in New Jersey, I believe, is that right, Mr. Perna?

A Yes, sir.

Q On February 1st, to be exact, 1974?

You are nodding your head. I don't know.

A Yes, sir.

Q Now, Mr. Perna, you obtained those kilos from your French connection?

A No, sir.

Q Where did you get those kilos from?

A They were either part of the five kilos we got from Tony West or three that come from a fellow by the name of Tony out on Long Island.

Q You don't know?

A I'm not sure.

Q But you testified that you never saw Tony West deliver any heroin to anybody.

A That's true, sir.

Q So actually you don't know outside of what Verzino told you where the five kilos came from.

A That's true.

Q The Tony that you are talking about in Long Island, that's not Tony West?

A As far as I know, no.

Q Some other fellow by the name of Tony?

A As far as I know, yes.

Q Well, don't you know?

A I don't know, no.

Q Did anybody tell you that Tony West would deliver heroin to you in Queens or in Long Island?

A No, sir.

Q You knew it was a different Tony?

A Yes, sir.

* * * * *

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THE COURT: Possibly, ladies and gentlemen of the jury, a few words might add additional clarification

to the last two documents read by Mr. Panzer.

Firstly, you are to understand that no judge by this document is compelled to mete out a sentence which a prosecutor thinks appropriate. There is nothing in that document that says that the judge of the state court must hand down such and such a sentence because it is requested by the federal government. All that that says is that the government will go before such a court and lay before such a court Mr. Perna's cooperation with the federal government.

The judge who then has the obligation of sentencing may take it into consideration, may disregard it, may pay no attention whatever to it, may adopt it in whole or in part, he may allow it to influence his determination as to how much sentence to mete out.

There is nothing in that document that compels any judge or any parole authority or anyone having a duty to perform in connection with the exercise of a public trust to adopt what is brought to his attention.

On occasion I have found it necessary to say "Well, just tell me exactly what it is you say this man did. I wasn't there, I didn't have that case, what's it all about?"

"Well," says the man coming before me, "I come

from Idaho, California" wherever he may come from, or "New York, and I want your Honor to know I was the prosecutor and here is the record and here is what took place and here is what he did, and I think it no more than fair that we should call that to your Honor's attention."

That's the size of it. The law doesn't frown on that at all. Whatever should be said in favor of the person who has done something and that is creditable in the eyes of the person advocating it or presenting it, should be considered to be weighed and acted upon entirely within the scope of the judge or the government official before whom the matter is laid.

We do not have to agree with him, and we can disregard it.

Either "I don't care about it, but thank you very much, good day," or "That is something I will give thought to."

Whatever the judge thinks.

I want to make it clear that as far as that document goes.

Now, what about the second document? What does that mean?

Well, the attorneys -- not only Mr. Panzer for his client, and Mr. Amorosa for the government, but all the

attorneys -- have given a nod of approval to that stipulation.

What does it really mean? It means that under the law there is a certain maximum that the commission of a crime carries with it, a maximum of punishment. We thought among ourselves that there is no reason why a lay person should tell us about that, that we should tell the jury what the law has to say about that.

So I suggested, and counsel were kind enough to act on it, that a stipulation be drawn up and that the jury be told that in connection with some of these state offenses involving narcotics there is a maximum and a minimum.

You heard that the maximum upon a conviction by plea or after trial is life, and a minimum of one year to eight and a third years, so that the judge, in such an instance, the state judge, can mete out a sentence of life imprisonment or he can say "No, I don't go for that, what I am doing is giving him five years."

Well, that means that he serves that time and that thereafter he is on special parole pretty much for the rest of his life, or the judge can say "One year, in the light of this, in the light of that, and in the light of what's happened over here," and so forth.

For instance, this has already been brought to

our attention, but it is a proper possibility.

The witness has pled guilty before me to three separate counts. The maximum is thirty years on each one and a $50,000 fine on each one, and six years special parole after he is released.

Theoretically, I could sentence him on Count 1 to thirty years, plust $50,000, plus six years special parole, and then I could go to the second count and do the same thing, and I could do the same thing with regard to the third count. So that theoretically I could mete out a sentence of ninety years in jail, $150,000 fine, and at least six if not eighteen years special parole.

What does that mean? When he gets out of jail he has got to account to the parole officer for all those years.

Why does the law do that? Because the amount of sentence is something that only the judge deals with, not the jury. The judge has before him a full report, and the judge decides what's in the best interests of the community and the best interests of the defendant. Each case varies. Each case depends upon the strength, weakness, etc., etc., of the human being.

Those are the factors which the judge must consider. It is not like pulling down a can of beans from

the shelf. These are heavy, worrisome things, and there is no human being in all my time that is totally bad. And so the judge has a right to listen to all good things as well as all the bad things, so to speak, and add them up and sentence the human being not just for the act that he committed, but based on the defendant as a human being.

It is a troublesome and worrisome thing, and it is the worst job that a judge has to do. Functioning as a trial judge at a trial carries with it no such worry. You get despondent, you walk up and down the floor, you don't know what's the best answer to that particular problem because of so many variables that have to be considered.

The time of another human being's life, and sometimes there are cases where the judge feels there should be an examination in order to determine the true mental capacity of the human being involved.

There are so many things the judge has power to do in order to give himself enlightenment with respect to strength or weakness of the human being involved.

So that is the reason the law gives a maximum. That doesn't say the judge is going to seize on the maximum. But it also gives him a minimum. And that's all this means.

Have I made myself clear? Do you all

understand it? Please indicate if you do not. Don't sit there and keep me wondering whether I have made it clear.

Have I made it clear? All those -- is there anyone who doesn't understand?

(No response.)

THE COURT: There is no hand that is raised.

All right.

Now, gentlemen, I may have in my faltering fashion omitted something, and there is no pride of authorship in anything I do. Thank God I have more than a nodding acquaintanceship with humility. I am a humble man, believe it or not, and I make my mistakes. That's why I forgive you if some of you err.

Have I omitted something that I should call to the jury's attention?

Hearing nothing, Mr. Panzer, proceed.

* * * * *

* * * * *

Q There was cross examination with respect to the amount of money that you possessed during the course of your

conspiracy with Verzino and others. How much money was paid, according to your knowledge, to Tony West?

A Approximately $250,000.

THE COURT: I am only doing this because I think it would be helpful. You suddenly inject the name Tony West. You mean so and so. Why can't we say now who that is. There has been thousands of pages, almost, certainly several hundreds of pages of testimony, with different people mentioned. They have been identified. Sohelp us every time you give a statement of that kind. Give us the person and let us have it clear.

Q The defendant DeLutro, Mr. Verzino, how much money according to Verzino was paid to the defendant DeLutro?

MR. J. PANZER: That has been brought out on direct. It is not proper redirect.

THE COURT: Objection overruled.

A Approximately $250,000.

Q Did you yourself meet with the defendant DeLutro in November, 1973?

A Yes, sir.

Q Where was that meeting?

A In a bar and restaurant on 30th Street and 2nd Avenue.

Q Who else was present?

A Ernie Malizia and Anthony Verzino.

Q Was narcotics discussed?

A Yes, sir.

Q Did Mr. De Lutro discuss narcotics?

A Yes, sir.

Q Was a 10-ounce shortage discussed?

A Yes, sir.

Q In your presence?

A Yes, sir.

* * * * *

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Q Did there come a time, Mr.Verzino, when your partnership secured pure goods?

A Yes, there did.

Q When?

A In November, early November, 1973.

Q Would you relate the events leading up to that?

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A Yes.

I went downtown one night to a restaurant and I met a person whom I had known for quite a while, Mr. DeLutro, Tony West, and we had a conversation, we struck up a conversation --

Q What restaurant was it?

A A restaurant called Raymond's.

Q Where was it?

MR. J. PANZER: Your Honor, let him fix a place.

THE COURT: That's what he's doing.

Q Where was it?

A A place called Raymond's, 29th Street and Second Avenue.

Q You had a conversation with him?

A Yes, I did.

THE COURT: Will you give us the date as best you remember?

THE WITNESS: Some time during the first part of November, possibly the first week of November.

THE COURT: Of 19 --

THE WITNESS: '73.

THE COURT: Very well.

Q What was said in this conversation in substance?

A I hadn't seen him for a good many years and I was somewhat surprised. "Hello, how are you?" He asked me when I came home, and I told him. He asked me, inquired after some friends we had in common who were in Atlanta, and I answered -- he asked me about Tony Grand and Jimmy Ferrara.

MR. J. PANZER: I can't hear. He is dropping his voice.

A He asked me about a man called Tony Grand and Jimmy Ferrara who had been at Atlanta with me while incarcerated on another case, and I answered that they were well.

He asked me that he had heard the old man on the case, Joe Stassi, was putting in some kind of a writ, and I said yes, he was, and then he told me --

Q What did he mean when he said that, Mr. Verzino?

MR. J. PANZER: Objection as to what he meant.

THE COURT: Has it any meaning?

MR. AMOROSA: I would like to clarify -- Mr. Verzino obviously knows the meaning of what's being said. He is relating the words in substance, and possibly they need some clarification.

THE COURT: You mean that "writ" is going to be explained?

MR. AMOROSA: Yes, what a "writ" is in

connection with Joe Stassi.

THE COURT: Objection overruled. What is it?

THE WITNESS: Joe Stassi had gotten a--

Q Just tell us what a writ was.

A A writ was some form appeal on the original conviction.

THE COURT: Next question.

Q Thank you.

Will you continue with the conversation?

A Then he told me that a mutual friend had come home, he said Tony Mira came home, and I said "Good, maybe I'll see him."

He asked me what I was doing. He said "What are you doing? Are you doing anything?"

I said "No, but I'm moving around a little bit, you know, I'm trying to see what I can do."

He said that goods was high. He said to me, "You know, goods are very high these days, today." I said "Yeah, I heard, but how high? What do you mean high?"

He said anywhere up to 60, 65 thousand. And I said "Geeziz, you're kidding, it can't be that much."

I said, "I could get goods for 20, 25 thousand."

He said, "If you can get goods for 20, 25 thousand, I'll take all you can get."

I said, "Well, I don't know, that's what I think, I had something going one time, maybe I can get it going again. I'll let you know."

And then we just were drinking and discussing various mutual friends or acquaintances.

Q Subsequent to that conversation did you speak with Malizia and Perna with respect to it?

A Yes, I did.

Q When?

A That night or the following night, either --

Q Do you remember where you talked to them?

A I think it was in either the Golden Gate Restaurant or in a French restaurant on Lexington Avenue, I don't recall which place.

Q What was the conversation you had with Malizia and Perna with respect to your conversation with West, or DeLutro?

A I told them that I had been downtown and I had run into Tony West, and that he had said he could get some goods and that I had answered -- I had said that I could possibly get goods just to see what he could do. Ernie asked me what I think about it, and Mario said, you know, what do you feel he could do?

I said that I thought he could get goods but

that the price would be high, probably 40, 45, that he mentioned a figure of up to 65, but that probably was the outer limit of a figure.

Q What quality of goods were you talking about here?

A Pure heroin. Ernie asked me what I thought, and I said, "I think we can do something."

He said "All right, why don't you go back downtown and see what he could do and what the figure would be, and if it is a figure that's any good, why don't we try it, but don't take a high figure."

I answered that even at 50, 55 thousand, possibly even 60, that we were better off doing that than taking adulterated goods which was actually costing us up in as far as 100,000 depending on how many times the package was adulterated. He agreed, and Mario agreed.

Q Subsequent to that conversation, what did you, Perna and Malizia do with respect to this subject matter?

A Well, the following evening, or the evening thereafter -- I think it was the following evening -- I went back to Raymond's, and I spoke --

Q Did you go downtown alone?

A No, I didn't.

Q Who did you go with?

A I took Ernie and Mario with me in the car. But I dropped them off at a bar nearby.

Q Where was the bar that you dropped them off?

A Around 30th Street, 31st Street, in that area, on Second Avenue.

Q What did you do after you dropped them off?

A I went to park the car and walked about three-quarters of a block to Raymond's Restaurant and went in.

Q Did you have a conversation with Mr. DeLutro?

A Yes, I did.

Q Was anybody else privy to the conversation?

A Not that I recall, no.

Q What was said, in substance?

A I told him that -- I said, "You were right. I spoke to somebody, somebody I tried to get in touch with. He can't do nothing now, and you were right, the goods are high. Do you want to do something? We'll try."

He said he could do something but depending on what I wanted.

I said "It depends on the price, what the price would be." We dickered a bit.

He said he probably could give me something for 50,000 a kilo. I said, "Well, maybe I could take five."

"Can't you take more?"

"No, I can't take more. I could try five. I could come up with most of the money ahead for five."

Q What do you mean "ahead," Mr. Verzino?

A Well, that is I could pay for the five cash ahead of --

Q You mean up front?

A Up front, yes. In front.

THE COURT: Would you suffer a suggestion?

MR. AMOROSA: Yes, sir.

THE COURT: And this is no criticism. I learned it, and you might.

When you're developing a conversation and you want certain things to be explained that remain uncertain hold it until the conversation is quite complete, and then go back and say "In the course of your recital you said such and such. What did you mean?"

What you're doing is, we are concentraing on the conversation, and you jar us by saying "What does such and such mean?" Then we go back to concentration on the conversation and then that's jarred again to explain some point, and then we go back to the conversation, and that is a terrific burden on the fact finder.

Try it out for size.

MR. AMOROSA: Thank you. Yes, sir. I will adopt

the suggestion.

THE COURT: If you don't like it -- it always worked for me -- try it out and throw it in the discard, if it doesn't bring you results.

MR. AMOROSA: I think I will adopt it, your Honor. Thanks.

THE COURT: Try it out.

Q What was the conversation?

A Do you want me to start from the beginning?

THE COURT: Yes, I'm afraid so, in order to prove my point.

A I said to Tony West that I had tried to get in touch with some people and I had failed, and that other people had told me that he was right, that goods was very high, prices were very high, and that if he could set a reasonable price within the limits we had spoken of that I would be interested in taking something from him.

We dickered a while, and he said that he possibly could give me something, depending on the quantity that I took for a price around 50,000.

We agreed finally at a price of 50,000 depending on how much I would take. I said that right then I thought I could take at least five if I could owe a little money. I could bring up almost all the money or possibly all the

money in front, ahead.

He asked me how much money. I said "I don't know. Over 200,000. I'm not sure exactly how much money over, but I'm sure it won't be a substantial amount left owing and we would clear it up as fast as we could."

He agreed, and I told him who that I was involved with, that I had not brought Mr. Malizia there because Malizia was a fugitive, andI said, "You know, he could get away with it because his face had been changed," but that it wasn't a good idea to take too many chances with it.

He said all right and then we made an appointment for the following evening. I told him that I would be down the following evening and that I was sure I could take the five, and that I would bring him a sum over 200,000.

He said try to get as much over as you could, as much of the total as you can, and I said I would. We made an appointment for some time the following evening, and I left and I went back to Mr. Malizia, and Mr. Perna.

THE COURT: Now, it's all yours, Mr. Amorosa.

MR. AMOROSA: I think he already explained it, your Honor. Thank you very much.

Q What did you do when you met Malizia and Perna?

A I went into the bar. We had a drink, and we

discussed what just had taken place.

I told them what had taken place and they agreed and we agreed the next day I had some money in the safe deposit box, I believe about $100,000, and they said to get that ready and they would get various monies that they had, and that we would meet and put it together, count it, and then keep the appointment the following night.

Q What did you do the next day?

A We garnered money, and we counted the money, and we put it in a container, a box, a cardboard box, carton.

Q How much money did you gather together?

A 234,000.

Q After you got the money together, what did you do that evening?

A We went downtown, Perna, Malizia and I. We put the money into the car and we went downtown.

Q Where did you go downtown?

A To the area of 30th, 31st. We started -- I dropped them off at a bar, a corner by some bar, I don't know the name of the bar. It's like a bar-restaurant.

Q Where was it?

A On 30th Street and Second Avenue.

Q Was it the same bar they were in the previous night?

A No.

Q Did you have a conversation with respect to the change in bars?

A They were going to go into the bar but they said the bar didn't look suitable, there was too much traffic in and out and we weren't the type to go into the bar, and that Ernie shouldn't keep going -- it was bad for Ernie because he was a fugitive.

He said "Why don't you change?" And we said we'll go across the street, there's a place there that -- Mario said "There's a place that serves a good Swiss steak" or a steak sandwich, I forgot what he said, and he said "We'll go there." We said all right.

I went to park my car between 29th and 30th Street on Second Avenue.

Q What did you do after you parked your car?

A I went into Raymond's Restaurant and met Mr. DeLutro.

Q What was said?

A I told him I had the money and if he was ready I was, and I told him how much I had, and he said it would be acceptable --

THE COURT: You better tell us what you said.

A I said "I have 234,000 in the car if that's all

right," and he said it was, and I told -- I asked him where he wanted the money, and he said to meet him on 29th Street between First and Second Avenue, to park in the block and he would come along and lift the lid on his trunk and to drop it in the trunk of his car.

He asked if there was a lot of small bills. I said there was 3,000 in tens and the rest was twenties and larger.

He said if there was too many small bills the people he was going to might charge him interest one percent for changing the money into larger bills, because the small bills were too bulky to handle. I said there wasn't that many small bills, that the majority was twenties, fifties and hundreds.

He said all right, at which point I left and I went into 29th Street.

Q How did you get to 29th Street?

A I drove.

Q Where was the money at the time you drove to 29th Street?

A In the trunk of my car.

Q What did you do when you got to 29th Street?

A I double parked.

Q What happened?

A Mr. DeLutro came along in his car and double parked ahead of me some ten, fifteen feet, and as I got out and took the box of money from my car, the cardboard carton, I walked to his car and he released his trunk from inside the car, he had an automatic trunk latch, and I placed the carton into his trunk and then walked around to the driver's side where he was sitting and I told him, I says, "I put"-- he said, "That's a big box, it looks like a lot of small bills."

I said, "No, it's what I told you."

He said, "Okay."

I said to him "I'll be in the place on 30th Street," and I described the place I left Malizia and Perna, I said "I left my partners, I'll wait for you there."

He said okay and he went away and I went to 30th Street.

Q What kind of car did he have?

A A large Oldsmobile.

Q Where did you go after that?

A I went to the bar where I had left Malizia and Perna.

Q Did you go inside the bar?

A Yes, I did.

Q Did there come a time after you went inside the

bar that you were joined by someone else?

A Yes.

Q Who were you joined by?

A I was with Perna and Malizia and Mr. DeLutro came and walked into the bar after about an hour he came in.

Q Was there a conversation?

A Yes, Mr. DeLutro told us there would be some delay, that he had had some difficulty in reaching a party and that there would be some delay, but he felt reasonably sure that everything would be all right but would be late that night if there was no further delay.

And Ernie said to him "Geez, what are we going to stay downtown all night? What is it, one of those deals?"

He said no, but it would be late.

I answered "Well, why don't we do it tomorrow night?"

Perna said "Yes, we can leave it for tomorrow night, this way we don't have to be out late running around with goods too late."

So he said "What about the money?" We said, "Well, hold the money."

Ernie said -- we all agreed he could hold the money.

He said, "Okay, but where would we met him

tomorrow?" We said pick a spot. He said "You pick a spot." We said we will meet you on Third Avenue between 35th and 36th Street, the Hill Cafe, you know the place.

He said, "Yes, I know the place."

We said, "We'll meet you there." We set a time, around 9, and we made those arrangements.

Then Mr. Malizia asked him, "Do you know any girls?"

He said "Yes. I know a girl. I got a phone number. Do you want me to call her to see if she's home?"

Ernie said "Yeah," he was laughing.

DeLutro went to the phone and he made a phone call and he came back and we had a drink and we were just talking generally, kibbitzing, and about ten, fifteen minutes later a girl came in, he introduced her to Mr. Malizia as Tricia, and Ernie said "I think I'll call you Trixie," and they began laughing, and then Mr. DeLutro left, and we stayed a while and we left.

MR. BLOSSNER: I can't hear.

THE COURT: Yes, I was afraid that might happen. Would you mind, Mr. Court Reporter, reading the last minute or so of testimony?

(Record read.)

Q When you left, did the girl come along with you?

A She might have. I don't remember.

Q Prior to the time Mr. DeLutro left, did he say anything about Queens?

A He asked --

MR.J. PANZER: Objection as to the form of the question as leading.

THE COURT: No, the form of the question is to avoid leading. He doesn't want to say anything to him, but he wants to call his attention to something so as to get the witness to concentrate on that new phase.

Am I right, Mr. Amorosa?

MR. AMOROSA: Yes, sir.

THE COURT: All right.

Did he say anything about Queens, yes or no?

THE WITNESS: Yes.

THE COURT: Next question.

Q What was said with respect to Queens?

A Well, when he first told us that --

THE COURT: Who is he?

THE WITNESS: When Mr. DeLutro first said to us, he said it may be late, he also said that "We may have to pick up the goods in Queens."

I said, "Geeziz, that's pretty far."

Mario told him that we didn't like to go to

Queens, or that it was not good to cross too many bridges or toll bridges, that it would be better either in Manhattan where there would be one bridge we could cross or a non-toll bridge to get into the Bronx, and he said okay, he would make it near by.

Then when we decided to put it off a night, we decided to meet him at the Hill Cafe following that.

Q Tell us where again the Hill Cafe is?

A On Third Avenue , between 35th and 36th Street.

Q What did you, Malizia and Perna do the next night?

A We went downtown to the Hill Cafe.

Q About what time?

A About 9 o'clock. About 9 o'clock some time.

Q What did you do when you got there?

A We entered and we started to order something to eat, but before my order could come I saw Mr. DeLutro appear near the doorway. There is a vestibule doorway with two doors to the Hill Cafe, and he was just starting to enter the one doorway, and I got up, and as he was between the doors I walked out and I met him, and we walked out onto the sidewalk.

He said to me "Pull in the next block up there," which was a westbound -- the next westbound block. He said,

"Pull in the next block where you can go up between Lexington and Third and I'll pull in there ahead of you and I'll give you the goods. The goods will be in my trunk, and I'll pop the thing as I did last night," and I said "Okay."

THE COURT: Mr. Clerk, would you hand the witness some water. Maybe that will help. He drops his voice.

A (Continuing) He said, "Go in the block and park there,"and he would pull up and he said he would open his trunk like he did the night before, but that the goods would be in his trunk and to take the goods.

I said "Okay."

So I went to my car, and I drove up a half a block or a block, I don't recall now the distance to the next westbound street, and went into the block about halfway, a slight hill, and he pulled into the block. I seen him in the rear view mirror, and he pulled up ahead of me with the car and he popped his trunk latch.

I was already by that time walking, and I was at the trunk, and there was a box in the trunk, and I took it out. And I put the box under my arm and I walked to his window and I told him, "Hang around at least an hour or so and I'll let you know if everything is all right."

He said "Okay, I'll be down there in the place."

I said "All right," and I left. I went back to my car, I started to put the box in my trunk, and I decided not to, and instead I put it under the -- on the floor nearly under the seat, my front seat, and went back to the Hill Cafe.

Q How big was this box, Mr. Verzino?

A It could have been 30 inches long, maybe 16 inches wide, 18 inches wide. Roughly that size. Maybe --

Q Do you recall roughly its color?

A It was a pasteboard box, a neutral color, a grey or a tan.

THE COURT: How deep?

THE WITNESS: About four or five inches deep.

Q What did you do after --

THE COURT: Would the jury like a few minutes recess?

(No hands raised.)

THE COURT: We are ready to go on. Proceed.

Q What did you do after you got this box in your car, Mr. Verzino?

A I went back to the Hill Cafe and I got Perna and Malizia and we then went uptown to the Bronx.

THE COURT: Would counsel like a few minutes? Please proceed.

Q How did you get uptown?

A By automobile. Two automobiles.

Q You had two automobiles?

A Yes.

Q Who drove in which automobile?

A Ernie drove one and Mario drove one. I was in the automobile with the goods and one driver. I don't recall who drove which car. I think it was Mario. I don't recall.

Q Where did you go?

A We went to an apartment on upper Broadway in Riverdale, about 256th Street and Broadway.

Q Who was in that apartment?

A It was an alternate plant we had obtained in order to rest the first one.

Q In order to what?

A Rest the first one, let it lay fallow, not be in use.

Q What happened when you got to the plant?

A We got out of the car and we were walking into the back door, and Mario told Ernie and I, he said, "Did you see who just pulled up?"

I said, "No, who?"

And he indicated a car to me and said it was Skooch and Charlie.

I said "Yeah?"

He said, "Yeah, that's there car," which I didn't really recognize the car, but I took him at his word.

He said before when we went in the cellar door to the building and we had entered into the cellar and we were by the elevator he said, "I think they went into the building. Give them time to get upstairs, wherever they are going, so we don't run into them."

I said "Okay."

We waited a while and then we took the elevator to the fourth floor and we went into an apartment we had on the fourth floor and we began to prepare and test and weigh the goods.

Q Did there come a time you did test and weigh the goods in the presence of Perna and Malizia?

A Yes. Right then.

Q What did the test reveal in terms of purity?

A It revealed an acceptable quality of purity. It's in the high eighties or possibly the early nineties, within five or six percent points. It is an empirical test, it's hard to tell, but it revealed an acceptable grade of heroin, what we would consider pure heroin, pure enough to be acceptable.

Q What did it reveal in terms of weight?

A It revealed a shortage in weight, a shortage in each half package, each half kilo, which there were ten half kilos. The shortage amounted to roughly 8, 8 and 3/4 ounces.

Q Did you and Malizia have a conversation right at that time?

A Yes, we did.

Q With respect to that shortage?

A Ernie --

Q What was said?

A I was by the window at that time, and Ernie said-- because the testing had been done and we had been aiding, each taking a different part, I had finish my part, and Ernie was weighing -- Mario called me over and said to me "Come here," and Mario said, "Look at this thing, it's short."

I weighed up to check with his estimates and I said, "Yes, it's about a quarter kilo short."

He said "No, it's ten ounces."

I said, "It is not really ten ounces but at least a quarter kilo," and he said "What do you want to do?"

So he asked Mario and Mario said, "I don't know, what do you think?" He said to Ernie, "What do you think?"

Ernie said "We better tell him."

I says, "Listen, I think we should take it because even with the shortage we're still ahead, we could adulterate to make it up. We could make it the basis of a complaint, possibly get an arrangement in monies, but I wouldn't press it. If we are going to do something else the next time, we can use it as a bargaining point."

Ernie said to me that he thought that I was being too lenient about the shortage in my opinion, but I said, "No, I don't think it is worth it because no matter how, even with this shortage which amounted to in terms of cost a sizable amount of money, we was still much ahead in the area of adulteration, when we adulterated this we would better than double our money almost, depending on what prices we got for the final merchandise."

And at that we agreed, so we agreed to keep it, and we bundled it up, and put it away.

Q Was it ten half-kilo packages?

A Yes, it was.

Q What did you do after this weighing, testing and conversation?

A We left the plant and we went down along Broadway where I got off and made a phone call at a public booth.

Q Who did you call?

A I called Mr. DeLutro, at Raymond's Restaurant.

Q Did you have his number?

A Yes.

Q What did you say to him?

A I said that the thing was acceptable. I told him, "Listen, that thing is all right, but there is a little problem."

He said "What?"

I said, "There's a little problem. I'll talk to you when I see you. I'll see you tomorrow, but there is some problem. I've got to see you, I'll see you tomorrow night as soon as I can."

Q Let me direct your attention to the next evening or thereabouts. I ask you:

Where you, Malizia, and Perna when

A We went downtown.

Q Where did you go downtown?

A We went to the bar we had been in at the second meeting, Second Avenue and 30th Street, a bar and restaurant. We left Mr. Malizia there, and Mr. Perna and I went over to Raymond's Restaurant and met Mr. DeLutro.

Q Did you have a conversation with him?

A Yes.

Q What was said?

A I told Mr. DeLutro, and Mr. Perna told Mr. DeLutro -- we had a drink first and we got settled where we couldn't be overheard in the corner of the bar, and we both told Mr. DeLutro that there was a shortage in the merchandise.

Q Keep your voice up.

A We told Mr. DeLutro, each of us, or I told Mr. DeLutro, and then Perna also affirmed it, that there was a shortage in the heroin of approximately ten ounces. We exaggerated the shortage somewhat, according to Ernie's estimate anyway, we exaggerated it, and I went along with it by about an ounce and three-quarters.

Q You were lying to DeLutro about the shortage?

A Yes. There was an actual shortage, but we added about an ounce and a quarter, in order to make it greater because in ten packages we would then claim an ounce in each package. As it was, it was eight and three-quarters ounces short in actuality, counting the wrapping.

Q What else was said?

A And he said, "Are you kidding or something?"

We said, "No. We are short."

He said, "You know, them people" -- whoever he was speaking of, I don't know who he was speaking of -- "complained about the small bills."

I said, "What's that got to do with the shortage? If you can separate the amount of small bills from the amount of money we gave you and tell us how much it was, then I'll give you what you want of the small bills, but to my memory there was only three, maybe four, five thousand, possibly the most four, five thousand in ten dollar bills, the rest in twenties or larger, and then most of it was fairly large money."

And he laughed. He said, "No,how can I separate it now? I already gave it to them."

I said, "What about the shortage?"

And Perna said, "The price we are paying it is a serious shortage,"and we discussed the shortage further.

I gave him a figure as to how much it would come to. He said, "You can make it up."

I said, "Why don't we go and talk to the other guy in the bar up there, because he is pretty steamed up about the shortage. Not steamed up, but he wants to talk about it."

He said, "Okay," and we went up to the other bar and we met Ernie, and Ernie began to complain to him. He said, "Geeziz, what kind of a deal is this, you are ten ounces short, you're making us lose money."

Tony said, "No, you're whacking it anyway, what's the difference?"

We said there is a lot of difference between ten ounces if we whack it four times is forty ounces that could be $30,000, as much as we can get for it, you know, a lot of money. And the profit we lose, it isn't cost. We could make the cost up, but it's profit we lose.

He said "You're complaining about the small money, what about the shortage? That don't count?"

He said, "Maybe we can do something the next time."

Then he asks us when we would have the $16,000 balance that we owe him. We said as soon as we start moving, that we hadn't started moving anything yet because we had some other goods and we didn't want to touch this in any event until we had settled the matter of the shortage.

That was about it. We said we would get in touch with him. He said that if in the event we wanted to do something else, he would see about making up the shortage if there was a shortage, he would speak to the people and we left on that note.

Q Did there come a time after that, Mr. Verzino, when you paid the balance off?

A Yes.

Q When was that?

A It was in November, late November.

Malizia and I went downtown --

THE COURT: All he asked you was when, and you answered it.

Q Where was it paid off?

A At the rear door of Raymond's Restaurant.

Q Was anybody with you when it was paid off?

A Yes.

Q You say it was in late November?

A Yes.

Q Relate in your own words the events leading up to it.

A Malizia and I left my house, we had counted some money, and we took out $16,000 in hundred dollar bills and made a small packet out of it, two small packets, and then went downtown.

Malizia said he would come over with me and I said "I don't think it's a good idea. There might be people that know you in there," and he said he would wait outside. There was a firehouse nearby, he said, he would wait by the back door of the firehouse. I said "All right, it will only take a minute."

I went in and saw Mr. DeLutro in the rear of the

restaurant and I told him that guy is outside. He said, "All right, let's go out."

We went out through the back, through the back door, we went through the kitchen I believe, through the back door and we met Mr. Malizia.

As we met Mr. Malizia --

MR. BLOSSNER: I can't hear him in this corner. He keeps covering his mouth.

THE COURT: You be sure you are plain, and you are perfectly right. You must slow up and you have to keep your hands away from your l[illegible]s. You see, there are some defendants sitting there, their lawyers are there. That's the problem. That's the reason I have to appeal to each witness. We don't know what you're going to say. We want to follow what you're going to say.

When a witness rushes words the way you do, and when a witness lowers his voice on occasion, we are hard put to it, so try to avoid that, will you? You're going to be on the stand for a considerable period of time. They are going to cross examine you. We should not be wasting this kind of time getting you to speak up.

Now, if you get a little tired tell me and I will do something about it, but until you say something,

please see to it that we understand.

Please read the last answer.

(Answer read.)

THE COURT: I don't know how many times I have had occasion to make this comment to you and your colleagues, Mr. Deutsch, but really if I was half as efficient at my job as you were at yours, I would be internationally famous.

All right, next question.

Q Would you continue with that narration, Mr. Verzino?

A As we met Mr. Malizia, we stood under the lentil of the step of his back door, the entrance way, and I reached into a leather jacket I had on and I said, "I got your money" and I gave it to him. I gave it to him in either one or two small packets.

I said, "It's all in big bills," and Ernie said, "You have got no beef about small bills, that's all hundreds."

So Ernie said "We shouldn't even pay you because, you knew, after all, the shortage, when you figure it out, comes to nearly what we owe you," and he was half sort of laughing when he said it.

Mr. DeLutro said "Are you kidding or something?

Why, don't you want me to make any money?"

Ernie said, "Yes, but you give us short eight."

As this discussion was being had a man come along without shoes, like who looked crazy, you know, hollering, and Mr. DeLutro started to tell us, he said, "You're going to come, you missed the boat." This man was looking at us as this was being said, and Mr. DeLutro said to me and Ernie, he said, "You missed the boat, you said I was trying to get ahold of you," meaning me, he said, "There was more goods."

I said, "Yeah, but decrease at these figures with a shortage any deal we make we ought to take the shortage into account and the figure has to be better. I hear they're selling goods for 37,000 uptown."

He laughed and he said, "Well, maybe we could do better but you have got to take a substantial amount more."

I said we could, if possible.

Now this guy was looking at us, he started to holler at either Ernie or more or one of us, and I stepped off the curb, and he started to come towards us. I stepped off -- not off the curb, I stepped out of the doorway to fend him off, I put my hand up, and he ran to the corner and started to jump up and down and screaming about God and --

Q All right, all right.

A And we got out of there.

THE COURT: Hold it. We will take a short recess.

(Recess.)

* * * * *

* * * * *

BY MR. AMOROSA:

Q Yesterday, Mr. Verzino, I think we were at a point when I asked you was this the first time that you had had a narcotics transaction with Mr. DeLutro.

Q Is that a question?

Q Yes. Was this the first time you had had a narcotics transaction with Mr. DeLutro?

A No, it was not.

Q How many prior narcotics transactions did you have with Mr. DeLutro?

A Several.

Q When were these narcotics transactions?

A 1961 or 1962, '65, and possibly in '64.

Q Did these narcotics transactions involve the narcotic heroin?

A Yes.

Q In what amounts?

A Kilogram amounts. TWo, three, five.

Q Two, three, five kilograms?

A To the best of my recollection, yes.

Q What was the quality of this heroin?

A It was pure heroin.

Q Did you sell him or did he sell you?

A He told me heroin once, and once introduced me to a group of men he was associated with that sold me heroin.

Q Did he know the reason why you wanted to be introduced to those people?

A Yes.

Q And how did he know?

A We discussed it.

* * * * *

* * * * *

4 R O S A R I O O D D O, a witness called on behalf
5 of the defendant DeLutro, being first duly sworn,
6 testified as follows.
7 THE COURT: Mr. Oddo, I say this to all witnesses:
8 You are about to give testimony under oath and the jury
9 must heasr every word. So will you please, even if you
10 have to strain yourself, see that they do?
11 THE WITNESS: I will.
12 THE COURT: No. 2, just answer the question as
13 put to you. You can't discuss this case, your testimony,
14 the way you would outside. There are certain
15 rules the Judge must honor. So I have got to keep you
16 confined to answering the questions that are put to you
17 and that is all. Just "yes" or "no" wherever you possibly
18 can? Do you understand?
19 THE WITNESS: Yes.
20 THE COURT: Don't volunteer any testimony?
21 THE WITNESS: No.
3 22 DIRECT EXAMINATION
23 BY MR. J. PANZER:
24 Q Mr. Oddo, where are you employed?
25 A Raymond's Restaurant.

Q What is your employment?

A Bartender.

Q Mr. Oddo, I take you back to the latter part of January, 1974. Were you so employed in Raymond's Restaurant at that time?

A Yes.

Q How long have you been employed in Raymond's Restaurant?

A Two years.

Q Do you specifically remember a date in the latter part of January that something occurred while you were so employed?

A Yes.

Q Will you please tell the Court and jury and keep your voice up, what happened?

A Well, this fellow, this man, Tony Vase, came into the bar and he asked for Tony.

Q Was he alone?

A No, the first time he was with another guy.

Q When was this?

A That was on a weekend night, either a Friday or a Saturday.

MR. J. PANZER: May we have this marked Defendant DeLutro Exhibit C for identification.

(Defendant DeLutro Exhibit C was marked for identification.)

Q Mr. Oddo, I show you Defendant's Exhibit C for identification and ask you if you recognize this picture.

A Yes.

Q Whose picture is this?

A Tony Vase.

Q Do you know him as Tony Vase?

A Yes.

Q Is it Tony Verzino?

A Tony Verzino, but I know him as Tony Vase.

MR.J. PANZER: I offer Defendant DeLutro 's Exhibit C for identification in evidence.

MR. AMOROSA: May I see it?

THE COURT: Show it to the government.

MR.AMOROSA: No objection.

THE COURT: Received. Mark it in evidence.

(Defendant DeLutro Exhibit C was received in evidence.)

Q I show you Defendant's Exhibit C in evidence and ask you if you know this man.

A Yes.

Q How do you know him?

A How do I know him?

Q By what name?

A Tony Vase.

Q Do you know him by any other name?

A Tony Verzino -- Verzini.

Q When did you first see this man?

A In the bar.

THE COURT: Why don't you use the name.

Q Tony Verzino or Tony Vase?

A In Raymond's Restaurant.

Q How long do you know him?

A About a year and a half, two years. Since I am there I know him in the bar.

Q Have you ever served him with beverages?

A Yes.

MR.AMOROSA: I object to the leading nature of the questions.

THE COURT: Yes.

Q I asked you about a late date in January and you testified that this Mr. Verzino came in the restaurant, Raymond's Restaurant, and you testified that he came in with another man?

A Yes.

Q Could you describe this other man?

A Short, stocky guy, looked like a prizefighter,

smashed nose kind of.

Q About how tall was he? My height? Was he shorter?

A I would estimate between 5-6 and 5-8.

Q Could you estimate his weight?

A No, he was stocky.

Q Did anything happen? You say they came in and asked for Tony? Tony who?

A Tony West.

Q Tony DeLutro?

A DeLutro.

Q Was Mr. DeLutro in the bar at that time?

A No, that evening he was not there.

Q Do youknow why he was not there?

A Yes.

Q Will you please tell the jury and the Court why?

A Because he was in Las Vegas.

MR. AMOROSA: Objection.

THE COURT: Objection sustained. The answer will be stricken and the jury will disregard the answer.

Q What did he say to you and what did you say to him?

A He asked me if Tony was here and I said "No, he wasn't," he was out of town and he would be back by Monday.

Q Then what happened?

A He left.

Q Did there come a time late in January, within a few days after this first visit by Mr. Verzino and the other man, that Mr. Verzino came in again?

A Yes.

Q Do you remember how many days after, subsequent, to the first time?

A That was the Monday.

Q And did anything happen -- withdrawn.

Did he come in with the other man?

A He was alone.

Q Did anything happen?

A Yes.

Q Please tell the Court and jury what happened.

A He asked me if Tony was here. I said, "Yes." Tony was sitting at a table that's kind of hidden from the

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bar. He says, "Tony."

Tony got up and he said, "I'll be right with you," and he continued into the back into the dining room.

Q When you say he, who do you mean?

A Tony Verzino.

Q What happened?

A He went into the dining room.

Q How many people were in the restaurant at that time, if you remember?

A Several people.

Q Several?

A Yes.

Q Would you say ten or more?

A Several. I couldn't give an exact number.

Q About what time of the night was this?

A It would be around between 10:30 to 11:30, something like that.

Q Did anything happen?

A Yes.

Q Please tell the Court and jury what happened. Did you hear anything?

A Yes. They started arguing.

Q Who started arguing?

A This Tony Verzino.

Q And who?

A And DeLutro.

Q Did you hear anything?

A Tony Verzino was yelling something about his wife and they had like an argument.

Q And what happened?

A And then he turned and he walked out.

Q Who is "he"?

A Tony Verzino.

Q Turned around and walked out?

A Yes.

Q Did Mr. DeLutro do anything?

A He was saying "What are you going crazy?"

MR. AMOROSA: I object to anything Mr. DeLutro said.

Q Did he do anything?

A No.

Q Did you hear him say anything?

A He was arguing back. They were arguing.

MR. AMOROSA: Objection.

THE COURT: We will receive that.

What else?

Q Do you know Mr. Verzino's wife?

A Yes.

Q And how do you come to know her?

A She used to come in the bar.

Q Did she come in with him or did she come in there alone?

A Sometimes with him and sometimes alone.

Q About how many times would you say she came in with Mr. Verzino?

A Quite a few times.

Q And how many times did she come in alone?

A Quite a few times.

Q You spoke to me about this case?

A Yes.

Q Where did you speak to me?

A In your office.

Q You told me what you recited this morning.

A Right. Yes.

Q What did I tell you to do?

A You told me --

MR. AMOROSA: Objection, your Honor.

THE COURT: Objection sustained.

Q You are sure that you heard an argument, something about Mr. Verzino's wife?

A I'm positive.

Q And that happened in the latter part of January

1974?

A That's right.

MR. J. PANZER: No further questions.

THE COURT: Cross.

MR. AMOROSA: May I proceed, your Honor?

THE COURT: Surely.

CROSS EXAMINATION

BY MR. AMOROSA:

Q Mr. Oddo, how long have you worked at Raymond's?

A Two years.

Q What do you work as at Raymond's?

A A bartender.

Q Have you been a bartender for two years?

A Yes.

Q Do you own any other bars in your own name?

A I don't own any bars. I never owned a bar.

Q You never owned a bar in your own name?

MR. J. PANZER: Answered, your Honor. Objection to repeating the question.

THE COURT: Overruled.

Q What is DeLutro's position at Raymond's?

MR. J. PANZER: Objection, your Honor.

THE COURT: The objection is sustained.

Q Was Mr. DeLutro at Raymond's frequently in late

1973, early 1974?

A Yes.

Q Was he there nightly?

A Yes.

Q Was he in charge?

MR. PANZER: Objection.

THE COURT: That's a suggestive question. Will you reframe it. Let him tell us.

MR. AMOROSA: Yes, sir.

Q What was Mr. DeLutro's position at Raymond's in late 19 --

THE COURT: Did he have a position there of any kind, yes or no?

THE WITNESS: No.

THE COURT: He was just a customer?

THE WITNESS: Well, he was kind of like a manager. He tried to help the business.

THE COURT: Well, so he was connected with the business?

THE WITNESS: Well, yes, in a way. Yes.

THE COURT: Next question.

Q Who owned Raymond's in late 1973, early '74?

A Raymond Carmana.

Q Did he work at the bar also?

A Yes.

Q Did Mr. DeLutro give him instructions on how to run Raymond's?

A On how to run it?

Q Yes, sir.

A Not how to run it, no.

Q Did he give him any instructions at all?

A He used to help him to get customers come in.

Q You mean patrons?

A Right.

Q How do you know that Raymond Carmano owns Raymond's Restaurant?

A Because he pays me. He is my boss. He told me he owns it. He is on the license.

Q Mr. Carmano told you he owned Raymond's?

A Yes.

Q When was the last time he told you he owned Raymond's?

MR. J. PANZER: Objection.

THE COURT: Overruled.

Do you remember the last time he told you that?

THE WITNESS: He always owned it, since I worked there.

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Q Does he still own it?

A Yes.

Q Is he still a bartender there, also?

A Yes, he still gets behind the bar.

Q Is he behind the bar as often as you are?

A Yes.

Q He is behind the bar as often as you are and yet he owns the bar?

A Yes.

Q Is Mr. DeLutro behind the bar also?

A He never gets behind the bar.

Q He manages Raymond's, though, you said?

A In a kind of way.

Q Is he paid a salary by Mr. Carmano?

A Not to my knowledge.

Q Have you ever had any conversations with Carmano with relation to the fact DeLutro is --

MR. J. PANZER: This is not proper cross. I didn't bring this out on direct.

THE COURT: Objection overruled.

Q Have you ever had any conversations with Carmano concerning whether Mr. DeLutro is paid for his managerial capacity at Raymond's?

A No.

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Q You have never had any conversations with him?

THE COURT: He said, "No." You are repeating it.

Q Have you had any conversations with Mr. DeLutro whether he was paid with respect to his managerial functions in Raymond's?

A No.

Q You never had any conversations?

MR. J. PANZER: He answers "No," and he keeps repeating it.

THE COURT: I know. He can't be perfect. The Judge isn't, either. There it is.

Next question.

Q Would you describe Tony Verzino, please?

A Yes. This is him (indicating picture.)

Q How tall is he?

A Around my height.

THE COURT: Wait a minute.

Witness picks up DeLutro Exhibit X.

Now, what were you saying? How long do you know him?

THE WITNESS: How long do I know him?

THE COURT: Yes.

THE WITNESS: Two years.

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Q And how long have you worked at Raymond's?

A Two years.

Q You met him for the first time in Raymond's?

A Yes.

Q Who introduced you?

A They came at the bar, he was with his wife. I can't remember exactly who introduced me to him.

Q But somebody did introduce you to him?

A Yes.

Q Did you ever see him with Mr. DeLutro on more than one occasion in your life?

A Yeah.

Q How many occasions have you seen Mr. Verzino with Mr DeLutro in your life?

A Two times, maybe three times.

Q In your life?

A Yes.

Q You say he came into Raymond's many times in late 1973, --

THE COURT: Who is "he," please?

MR. AMOROSA: Verzino.

Q You say that Verzino came into Raymond's many times in late 1973, early 1974.

A Right.

Q Are you certain that the meeting that you described on direct examination between Mr. Verzino and Mr. DeLutro occurred in late January, 1974?

A Yes.

Q Are you certain that it did not occur in early February, 1974?

A No, it was in January.

Q You are positive it occurred in late January, 1974?

MR. J. PANZER: Your Honor, he has answered "Yes," two or three times, and I object to the repetition of the question.

THE COURT: Objection overruled.

Q You are positive it did not occur in early February, 1974?

A Yeah, uh-huh.

Q You are absolutely positive?

A Yeah.

Q How are you so positive, sir?

A Because I remember Tony coming -- Mr. DeLutro coming back from Vegas at the time.

Q He was in Las Vegas?

A Yes. It was the weekend he came back, and it was a big weekend in Vegas because of Sinatra's comeback which

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was the talk of the bar in New York.

Q Mr. DeLutro indicated he had come from Vegas?

A I asked him how the show was, and he said "Fantastic."

THE COURT: Nobody asked you that.

Next question.

Q How much does Mr. Verzino weigh?

A I have no idea what he weighs.

Q Could he weigh as much as 250 pounds?

A No.

Q Could he weight as little as 150 pounds?

A I would say maybe 150.

Q About 150 pounds?

A I'm only guessing.

Q Did he take his jacket off at Raymond's while you were there with him?

A No.

Q Was Mr. Carmano behind the bar while Verzino was in Raymond's on these many occasions?

A Probably. There were times he had to be behind the bar.

Q Would you describe Verzino's wife, sir?

A Yes. Redhead. Pock face, fairly attracti[illegible]

Q Can you identify a picture of her?

A Yes.

Q Were you paid by check or by cash?

A Cash.

Q You were paid by cash?

A Yes.

Q Weekly?

A Well, see, I work tips, and a friend --

Q I am asking you, sir, are you paid weekly?

MR. J. PANZER: I submit that the witness should be allowed to answer.

THE COURT: That I agree.

How were you paid over these two years, tips and what else?

THE WITNESS: I have to explain that to you, your Honor.

THE COURT: Go ahead.

THE WITNESS: I work on tips, and if Raymond has a good weekend he would throw me something. I am not on a steady salary.

THE COURT: Very well.

Q When Verzino came in the bar in late January -- strike that -- in late 1973, early 1974, did you have many conversations with him?

A No.

Q You can't remember who introduced him?

A No.

Q You say you have seen Mr. DeLutro and Mr. Verzino together on several occasions?

A Once or twice.

Q Once or twice?

A Yeah.

Q Mr. DeLutro was in the bar on many occasions when Mr. Verzino was in the bar, is that correct?

A Yeah.

Q But you only saw them together on one or two occasions?

A Right.

Q But you know that they know each other.

A Yeah. He maybe told him "Hello" --

Q I'm just interested in the answer to the question, sir.

A Yeah.

Q You know that they know each other.

A Yes.

Q Does Raymond Carmano know that they know each other?

MR. J. PANZER: Objection. Calling for the operation of this witness' mind.

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THE COURT: Sustained.

Q Who are the other bartenders at Raymond's, sir?

A Raymond Carmano.

Q And you?

A Yes.

Q Have you and Raymond Carmano been the only bartenders since late 1973?

A Nighttime bartenders?

Q Daytime and nighttime bartenders.

A Yes, we are the only bartenders.

Q You are the only bartenders both night and day time?

A Yes.

Q And Mr. Carmano owns Raymond's, is that correct?

A Right.

Q And Mr. DeLutro manages it?

A Well, he acts like a manager.

Q But he is not paid?

A Not to my knowledge.

MR. J. PANZER: Objection.

THE COURT: Objection sustained.

Q What is the phone number in Raymond's?

A 964-1892.

Q Is that a pay phone?

A Is that right? I'm not sure. Yeah.

Q Is that the only phone in Raymond's?

A Yes.

Q Is that the number today, sir?

A Yeah.

Q How long has that number been in Raymond's?

A Since we opened.

Q When did you open?

A Two years ago.

Q Raymond's was opened two years ago?

A Yes.

Q And you have been a bartender since its been opened?

A Yes.

Q Can you tell us the month it opened?

A I believe it was June.

Q Of what year?

A 1973.

Q Did Mr. Verzino begin to come in right after it opened?

A Yes.

Q He came in in June and July of 1973?

A No, not right after, no.

Q It took him some time?

A A few months after it opened.

Q When did he begin to come in?

A I couldn't say exactly. I don't remember exactly.

Q Well, I'm not asking you exactly, sir. Can you give us the month?

A No. I would be guessing.

Q You would be guessing?

A Yes.

Q Would you say he came in in 1973 some time?

A Yes.

Q How many times did he come in in 1973?

A Several times he was in.

Q Several times?

A Yeah.

Q Is that different from "many times"?

A Well, I can't give you an exact figure. I know it is quite a few times.

Q Was it over ten times?

A Maybe.

Q After this argument that you observed between Verzino and DeLutro, did you speak to DeLutro about it? Yes or no?

A After the argument?

Q Yes.

A Yes.

Q The same night?

A Yes.

Q What did he tell you?

A I told him. I says, "What was that all about?"

Q What did Mr. DeLutro tell you?

A He says, meaning this guy, "He is going crazy, accusing me of fooling around with his wife."

Q Did you overhear that conversation?

A Overhear what conversation?

Q The conversation to which Mr. DeLutro referred.

A It was an argument. It wasn't a conversation. Verzino was yelling.

Q Were they talking?

A He was yelling.

Q Who was yelling?

A Tony Verzino.

Q What was Mr. DeLutro saying in the conversation?

A I can't give you word for word.

Q In substance?

A I beg your pardon?

Q Can you tell us the substance of what was said,

or can't you recall except that it was an argument.

A I just recall the argument, and I can't give you word for word, no.

Q Did Mr. Verzino ever talk to you about this afterwards?

A After the argument?

Q Yes.

A Yes. I just told you that.

Q Mr. Verzino.

A Oh, no. Mr. Verzino, no.

Q He didn't come back to Raymond's after that?

A No.

Q And that was late January, 1974?

A Yes.

Q The argument that Verzino had with DeLutro, was it on the same night DeLutro returned from Las Vegas?

A I think he returned on a Sunday. This was on a Monday. I think. I am not sure what day he returned on.

Q So it was one or two days later?

A Yes. I don't remember the date he returned on.

Q You also testified on direct examination to another occasion on which Verzino came into the bar with a short, stocky man.

A Yes.

Q When was that, approximately?

A That was the same weekend, either Friday or Saturday night. I don't remember the exact night.

Q So that was also in late January, 1974?

A Yes. That's right.

Q Did you ever see Mr. DeLutro with that other man?

A No.

Q That was the first time he had been into the bar?

A The first time I had ever seen him.

Q The first time you saw him?

A Yeah.

Q Did you speak to Mr. Carmano about this argument you observed between DeLutro and Verzino?

A No.

Q Did Carmano observe this argument also?

A He wasn't there.

Q He wasn't working that evening?

A No.

Q You can recall that?

A Yes.

Q How can you recall that?

A Because I was working alone. Usually I work

alone on a Monday night.

Q Was it a busy night?

A Not really.

Q It was not a busy night?

A Not what I would call busy, no.

Q Would you describe Raymond's please?

A Would I describe it?

Yes.

A You walk in the bar is on theleft, there are several stools, then there is a dining room in the back with tables. And then there is a kitchen following the dining room.

Q Where is it located?

A It is on 29th Street, Second Avenue, in Manhattan.

Q Is there a firehouse in the vicinity?

A Yes.

Q Where is the firehouse?

A On 29th.

Q Is it adjacent to Raymond's?

A What do you mean "adjacent"?

Q Next door.

A No, not right next door. No.

Q A couple of doors down?

A Yes.

Q On 30th Street and Second Avenue, are you familiar with that area? One block up?

A Am I familiar with it?

Q Yes.

A A little bit.

Q Is there a bar on the corner of 30th and Second Avenue, the southeast corner?

A Southeast -- yes.

Q You testified that there was one phone in Raymond's?

A One pay phone, yes.

Q One pay phone?

A Yes.

Q Are there any other phones in Raymond's besides the pay phone?

A Yes.

Q What is the phone number on that phone?

A I have no idea.

Q Is it the same number today that it was in late 1973, early 1974?

A I have no idea.

Q You never used the phone?

A No.

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Q Who uses that phone?

A Raymond.

Q Raymond Carmano?

A It is a private phone.

Q It's a private phone?

A Yes.

Q Mr. CArmano is the only person who is permitted to use it?

A As far as I know, he is theonly person that used it.

Q Have you ever seen Mr. DeLutro use it?

A Not to my knowledge, no.

Q Who is the subscriber of that phone, do you know?

A No.

Q And you can't recall the number on that phone?

A I don't know it.

Q But that's the private phone, is that correct?

A Yes.

Q The public is not permitted to use that phone, is that correct?

A To my knowledge, they are not.

Q Pardon me?

A To my knowledge, they are not.

Q You have been there since it is opened, right?

A Yes.

Q Have you seen any member of the public use that phone?

A No.

Q Have you seen Raymond Carmano use it?

A Yes.

Q Is Raymond Carmano the only person you have ever seen use that phone in two years?

A Uh-huh.

Q Is that correct?

A Yes.

MR. J. PANZER: Your Honor, this line of cross examination has nothing to do with what I brought out on direct.

THE COURT: The scope of the cross examination is within the discretion of the Judge. You put the witness on, and you take your chance that the cross examination may develop something with regard to the witness that will cast reflection on the quality of his testimony, and the Judge must afford that opportunity to the cross examiner. Whether he succeeds or not remains to be seen. But to say he can't ask any questions other than those confined or brought out on direct, is not the rule of law as I understand it.

Accordingly, I must and am constrained to deny

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your opposition to the witness on the questioning going forward along these lines.

MR. J. PANZER: I withdraw my objection to it.

THE COURT: Withdrawn

Next question.

Q Did you ever get instructions from Carmano not to use th[illegible]hone?

A No.

Q But you have never used it?

A No.

Q Have you ever heard Carmano give instructions to anyone not to use that private phone?

A No.

Q Does Carmano use it frequently?

A Occasionally.

Q How often would you say?

A I don't know if he uses it when I am not there, I can't tell you because I'm not there every night.

THE COURT: Of course not, but while you are there. Let's get going.

How often have you seen that private phone being used by Mr. Carmano?

THE WITNESS: A couple of times.

THE COURT: You mean a couple of times a day?

Edit 26 ~~Odo cross~~

Is that what you mean?

THE WITNESS: No. Sometimes he won't use it at all.

THE COURT: All right. Next question.

Q And you are sure that the number on the phone today is the same number that was on it in late 1973, early 1974?

A Would you repeat it?

Q I said -- there is a phone number on that phone, isn't there, the private phone?

A Yes.

Q And you're sure the number on there today is the number that was on there in late 1973?

A I'm not sure. I never knew the number. I don't know it.

Q So it may have been changed?

A Possibly. I have no idea.

Q Have you ever spoken to Carmano about whether it was changed or not?

A No.

Q When you are not a bartender, is the only other bartender Mr. Carmano?

A Yes.

Q So there are only two bartenders in Raymonds?

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A Yes.

MR. J. PANZER: May I ask -- request, that the United STates Attorney does not keep repeating the same questions over and over. He's been asked that question two or three times.

THE COURT: Yes. You're right. I know the government will endeavor not to pursue that.

Q Where did you work before you went to Raymond's?

A Where did I work?

Q Yes.

A Well, I was working for myself trying to sell jewelry as a salesman.

Q What period of time did you work for yourself attempting to sell jewelry?

A About a year.

Q And when did you begin working at Raymond's again?

MR. J. PANZER: That's been asked three or four times and it's been answered three or four times and we still have the same situation.

THE COURT: This is the last time. What is the answer.

THE WITNESS: What was the question?

Q When did you begin working at Raymond's, again,

approximately?

A About two years ago.

Q You say about September of 1973?

A No, earlier. In June, July, around there.

Q Is that when it opened?

A Yes.

MR. J. PANZER: That's been asked again, your Honor. I must strenuously object to the same questions being asked.

THE COURT: Objection sustained.

Q Prior to the time you began working at Raymond's, you said you worked in jewelry?

A Yes.

Q You were a jewelry salesman?

A Yeah.

Q When did you begin that occupation as a jewlry salesman?

A In about 1972.

Q From 1972 until the time you began to work at Raymond's, is that correct?

A Yes.

Q What did you do prior to the time --

MR. J. PANZER: He didn't give him a chance to answer. He just looked at him.

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MR. AMOROSA: I believe he said, "Yes."

MR. J. PANZER: He didn't answer.

THE COURT: Mr. Deutsch, will you please read?

(Record read.)

Q You worked at Raymond's from 1973?

A Yes.

Q When did you begin to sell jewelry?

A About '72.

Q What did you do before you sold jewelry in 1972?

A I was unemployed for a while after that.

Q How long were you unemployed?

A About a year.

Q And where were you in that period of time?

A I beg your pardon?

Q Where were you in that year period of time?

A New York.

Q You were in New York State?

A City, yes.

Q Where in New York City?

A New York City.

Q You were living in New York City?

A Yes.

Q Prior to that where were you employed, sir?

A Let's see. I'd like a lot odd jobs, you know.

Q How long did you have those odd jobs?

A A year, two years.

Q Does that take us back to 1970?

A Yes.

Q So you had odd jobs in 1970 to approximately 1972?

A Uh-huh.

Q Is that correct?

A That's right.

Q And then you were unemployed for a year?

A Uh-huh.

Q Prior to the time you had odd jobs for about two years, what did you do?

A Well, I worked as a bartender, the bartender's night off, I would fill in. Things like that.

Q Would you relate to us from 1965 where you worked?

A 1965?

Q From 1965.

A That would be ten years ago. I worked in quite a few bars as a bartender, fill-in jobs for bartenders' nights off. Towers East, 72nd Street, Third Avenue. Phillip II, nights off for a bartender.

Q Would you say then, sir, that from 1965 until approximately 1970 you worked on and off as a bartender?

A Correct.

Q When you were off, how long were you off for?

A It could have been a month, two months.

Q Then you got another job as another bartender?

A Right. I would fill in for other bartenders on [illegible] nights off.

Q What about from 1960?

A I can't recall that far back.

Q You can't recall where you were working in 1960?

A No.

Q Can you recall whether you were working in 1960?

A I could have been working in a factory then. I really can't be sure. 1960 would be fifteen years ago. I would be -- fifteen years ago, I would be 22. I worked in a factory, I worked on a truck. At that time, I don't know if it was 1960, it could have been that time.

Q But it is your testimony, is it not, that you are paid by Mr. Carmano?

MR. J. PANZER: That's been asked and answered two or three times.

THE COURT: Objection sustained.

Q Mr. DeLutro has never given you any cash in

connection with your work?

MR. J. PANZER: It's been asked and answered.

THE COURT: Objection overruled.

Answer it.

THE WITNESS: What was the question?

Q Has Mr. DeLutro ever given you any cash?

A No.

Q In connection with your work?

A No.

Q Has he ever given you any cash, period?

A No.

Q In your life?

A In my life?

Q Yes.

A Maybe he gave me a tip at the bar.

Q What would he give you a tip for at the bar?

A For serving him.

Q For serving him?

A (Witness nods.)

MR. AMOROSA: No further questions.

THE COURT: Just answer the question.

THE WITNESS: I answered the question.

THE COURT: You shook your head. Is the answer yes?

THE WITNESS: What was the question?

THE COURT: Did he tip you for serving him at the bar?

THE WITNESS: Yes.

MR. AMOROSA: No further questions.

REDIRECT EXAMINATION

BY MR. J. PANZER:

Q Do you have occasion to call the number?

A Yes.

Q What is the number? 964-1892?

A I'm not sure. I think. I'm a little confused right now. Yeah, I believe that's the number.

Q You believe it.

Well, do you call? Do you ever look to see what the number is?

A Of the restaurant, the pay phone?

Q The pay phone.

A Yes, I call it occasionally.

Q Do you look to see what number you're calling from?

A The number I'm calling from?

Q Yes.

A No.

Q Do you ever receive calls there?

A Yes, sure.

Q Does Mr. DeLutro make calls from Mr. Carmano's private number?

MR. AMOROSA: Objection. Asked and answered.

THE COURT: Objection overruled.

A From the private number?

Q Yes.

A Possibly. I don't know.

THE COURT: Not possibly. We don't want your guesses.

Q If you know.

A If I know?

THE COURT: Do you know or don't you know?

THE WITNESS: It could be. I'm not sure of the answer.

MR. J. PANZER: No further questions.

THE COURT: Is there anything further?

MR. AMOROSA: One or two. Should I ask from here, your Honor, or should I go back?

THE COURT: I would like you to get through with it.

MR.AMOROSA: I will be very brief.

THE COURT: All right.

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RECROSS EXAMINATION

BY MR. AMOROSA:

Q You told us on direct examination very quickly, did you not, the number was 964-1892 at the pay phone.

A Yes.

Q You told us that quickly, didn't you?

A Yes.

Q When was the last time you said that number?

A Just now.

Q Prior to the time you told us on direct examination.

A I don't understand the question.

Q Prior to the time you told the Court and jury on direct examination what the number was, that is, 964-1892, when was the last time somebody asked you what the number was and you told that somebody what the number was?

A When you asked me.

Q Prior to the time you came into court --

A Yeah --

THE COURT: Before today, he means. Before today when did you last mention that number or use that number? That's all he wants to know; a week ago, a year ago? What's your answer?

THE WITNESS: I think I called up the bar during

the week, so I had to use it

THE COURT: So when do you say was the last time?

THE WITNESS: A week ago.

Q Now, is it your testimony, sir, that you did not ever see Mr. DeLutro at the private phone, or is it your testimony that you might have seen him at the private phone?

A He may have used it. I didn't say I may have seen him. He could have used it when I'm not there.

Q I see.

A I don't recall seeing him use it.

Q You never saw him use the private phone, is that correct?

A You mean to dial a number on it?

Q Yes.

A I never seen him dial the phone.

Q Where is the private phone?

A On the side of the bar.

Q And that's where you work, right, right in that same area?

A Right.

MR. AMOROSA: No further questions.

FURTHER REDIRECT EXAMINATION

BY MR. J. PANZER:

Q Are you confused as to the number, Mr. Oddo? Do you remember it definitely, or are you confused as to it?

A As to the pay phone number?

Q As to any number there.

A I don't know the number of the private phone.

Q Do you know any numbers there?

A Well, the pay phone, I believe is 964-1892. I'm not sure, no. I am a little confused right now.

MR. J. PANZER: No further questions.

THE COURT: Do any counsel wish to ask any questions of this witness before I excuse him?

(No response.)

THE COURT: Very well. Step down.

(Witness excused.)

MR. J. PANZER: May I have Mr. Andy Risoli brought in?

mdbr 1 Risoli-direct 3030

t2b

ANDREW RISOLI, called as a witness on behalf of Defendant DeLutro, having been first duly sworn, testified as follows:

THE COURT: Mr. Witness, I say this to all witnesses. You are not being singled out. First, raise your voice so that these ladies and gentlemen can hear every word. Next, just answer the question that is put to you. Don't volunteer any testimony. Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: I don't want you to suddenly say something that is not called for and jeopardize this trial.

Do you understand that?

THE WITNESS: I understand that.

DIRECT EXAMINATION

BY MR. J. PANZER:

Q Please keep your voice up so I can hear you back here.

Are you employed?

A I am self-employed.

Q What do you do for a living?

A I am an attorney.

Q Where is your office.

A At 253 Broadway, New York City.

THE COURT: Will you help me, sir, so that I can say

that I lived to the day when a witness was on the stand and he made a good witness. Lawyers are supposed to make the worst witnesses. I want you to be the exception, so I can go around bragging that I heard a lawyer on the stand and he was a good witness.

MR. J. PANZER: Do you want to put me on the stand? I will show you I can make a good witness.

THE COURT: The jokes are made by the Judge. None of that. I don't like it, I don't want it. Go on with your questions.

Q How long have you been practicing law, Mr. Risoli?

A Ten years.

Q Do you know Mr. DeLutro?

A I do.

Q How long do you know him?

A About five years, six years.

Q Could you tell this Court and jury how you know him?

A I met him through my brother, who knows him, and I just met him socially on may be ten or twelve occasions each year.

Q Are you a visitor in Raymond's Restaurant, 29th Street and 2nd Avenue?

A I go there pretty often, yes, sir.

Q Do you remember a late date in January when you were in Raymond's, and I believe you were with your brother?

A That is correct, yes.

Q I show you Defendant's Exhibit C in evidence. I think you have it in front of you, Mr. Risoli. Will you please look at it. After looking at it, do you recognize the picture?

A I do.

Q Whose picture this is?

A Yes, sir.

Q Do you know the man?

A I don't know him. I recognize the picture. I have seen him before.

Q Will you please tell this Court and jury where you saw him?

A At the restaurant.

Q And when you saw him?

A In January -- I can't give you the date but it was in 1974.

Q And under what circumstances you saw him?

A I was having dinner with my brother at the restaurant, we often have dinner there, and we had finished eating, we were having coffee at the end of the meal and Mr. DeLutro came and was sitting with us and we were talking.

I was sitting with my back to the dining room and I heard someone behind me say "You, I want to speak to you. Would you please come up. I want to talk to you" in a loud voice. So I turned around and it was this fellow.

Q And could you please describe how he was dressed, if you remember?

A To the best of my recollection he didn't have on a coat, he had on like a jacket, a heavy jacket.

Q Was he wearing glasses?

A He had glasses, they looked like tinted glasses but it was pretty dark, it is pretty dark in there.

Q Did Mr. DeLutro leave your table?

A At that time he got up and he went with this fellow.

Q When you say "he", who do you mean?

A Mr. DeLutro.

Q Where did he go?

A To the next table. He sat down --

Q Who is he?

A Mr. DeLutro sat down and the witness, I could give you, I can't give you the exact words --

Q The witness, you said.

A This fellow.

Q The man whose picture you see?

A Yes.

Q What happened?

THE COURT: Wait a minute. Will you please for the sake of accuracy, will you please try to develop from the witness what name he ascribes to C in evidence.

Q Do you know this --

MR. J. PANZER: I am sorry, did I interrupt your Honor? I am sorry.

THE COURT: No.

Q Do you know this man's name whose picture you see?

A No.

Q What did this man do?

A He had an arrangement, I classify it as an arrangement, with DeLutro at the next table.

Q Did you hear any words?

A I heard th words, yes, sir.

Q What were they, to the best of your recollection?

THE COURT: What was the subject of the conversation.

A The substance of the conversation was he told him in a loud voice--

THE COURT: Who is he?

THE WITNESS: The man in the picture.

THE COURT: Refer to him as the man whose

photograph you see here.

A The man whose photograph I see here he told him in a loud voice he knew that he was fooling around with his wife, that he better stop, if he didn't stop he was going to be sorry, and with that he turned to leave the dining room. This took place like in less than a minute. He turned to leave the dining room. He got --Mr. DeLutro got up off the table and said"Wait a minute, I want to talk to you," and nothing else was said, the man walked out.

MR. J. PANZER: No further questions.

THE COURT: All right.

Q One more.

About what time of the day or night was this?

A To the best of my memory, 9:30 at night. We were having dinner. It was 9:30, 10 o'clock, 8 o'clock.

Q You don't know the time?

A From 1974 I can't remember.

Q Did you speak to me about this case?

A I did.

Q About how long ago?

A Two weeks ago.

Q Can you tell me the testimony you recited today, did you tell me the same facts?

MR. AMOROSA: Objection.

THE COURT: I will allow it. Yes or no.

A Yes.

MR. J. PANZER: No further questions.

CROSS EXAMINATION

BY MR. AMOROSA:

Q Mr. Risoli, would you classify what you heard between DeLutro and this person who is reflected in that exhibit -- let us call him Verzino -- would you classify that as an argument?

A I would, yes,sir.

Q And they were sitting down at a table right behind you at the time?

A No, no.

Q Where were they at the time of this argument?

A This restaurant has a wall that runs along the side of the restaurant. The table that Mr. DeLutro went to is alongside the table that we were sitting at, and they weren't sitting down.

He, Mr. DeLutro, was sitting down. The other fellow never sat down, to the best of my memory. This is talking about one minute, a minute and a half.

Q How many times have you seen Mr. DeLutro at Raymond's, sir?

A How many times over period of time?

Q Since it opened?

A I don't know when it opened. I see him 12, 15 times a year, when I eat there.

Q Is he always there when you go there?

A Not always. 70, 80 per cent of the time.

Q Do you go there during the day as well as the evening?

A Never during the day.

A Only in the evening?

Q Right. 70 to 80 per cent of the time he is there?

A Yes.

Q Have you ever had conversations with Mr. DeLutro with respect to the ownership of that particular bar?

A The ownership?

Q Yes.

A No. No, I never did. No.

Q Have you ever heard Mr. DeLutro tell anyone that he owned Raymond's

A No.

Q Do you know who the owner of Raymond's is?

A I assume it is Raymond, those there.

Q Do you know Mr. Raymond's last name?

A No.

Q Do you knowwhere he works?

A Raymond.

Q Yes.

A I see him behind the bar there at night. I don't knowwhat he does in the day.

Q In the evening when you go to Raymond's and when you have gone to Raymond's in the past, have you ever seen Mr. Raymond there behind the bar?

A You are talking over three years. I couldn't say if I always saw him behin the bar.

Q Generally speaking?

A Generally speaking, I always see him behind the bar, yes.

Q What is Mr. DeLutro's position at Raymond's sir?

A I couldn't really say. I have no idea.

Q Do you know a person who goes by the name of Charley Brody?

A No.

Q Have you ever used the phone in Raymond?

A Have I?

Q Yes.

A Yes, sir.

Q Was it a public phone?

A A public phone on the wall.

Q Was it on the wall?

A It is on the wall near the entrance.

Q Have you ever used any other phone?

A No.

Q Do you happen to have the phone number of Raymond's?

A No, I don't.

Q Would you repeat what you heard again, sir?

A In substance?

Q Yes.

A In substance, he was saying that he knew that Mr. DeLutro was fooling around with his wife, right, and that he better stop or he he'd be sorry. That's the substance of the whole thing.

Q Before you saw the picture here in court when was the most recent time you saw that same picture?

A I only saw it once before, two weeks ago.

Q And have you ever seen the person depicted in that picture other than the time you saw him at Raymond's

A Never in my life.

Q Have you ever discussed your testimony with anyone prior to two weeks ago?

A Oh, yes.

Q When was the first time you discussed your testimony

with anyone?

A Some time in 1975. I think it was before the summer I was having dinner at Raymond's.

Q Who did you discuss your testimony with?

A Mr. DeLutro. By my testimony, I am talking about the incident.

Q You discussed the incident with Mr. DeLutro?

A Right.

Q In the summer of 1975?

A Right.

Q But you did not see a picture of this person until two weeks ago?

A No, I did not.

Q No picture of this person was shown to you in the summer of 1975?

A No.

Q And you have never seen this person before in your life, except that evening?

A That is correct.

Q Did Mr. DeLutro refer to him by name, do you recall?

A He did.

Q What was his name?

A I don't know. It started with a V -- I would like

if --

Q Was it Verzino? Do you recall that?

A He showed me a paper, and I read his name on a paper.

Q You asked in the summer of 1975 to see a picture of this man so you could identify him?

A No,I did not. I did tell him I wouldn't come here and testify unless I saw a picture and was satisfied it was the same person.

Q But you didn't see a picture until two weeks ago, is that right?

A That is correct.

Q Do you represent Mr. DeLutro in anything, sir?

A No, sir.

Q Do you know a person by the name of Joseph DiPalermo?

A Not by that name, no.

Q Do you know a person with the last name of DiPalmero?

A No, sir; not to my recollection.

Q Do you practice law in the city?

A Yes, sir. Mostly civil. I don't --

Q Pardon me?

THE COURT: Now you are letting me down.

THE WITNESS: I am sorry, Judge.

THE COURT: Do you practice law in the city? Yes. That answers that, right?

Next question. If witnesses only recognize how despondent a lawyer is when he gets a yes or no answer. It is when they add on something that the lawyer has a chance to make hay. All right.

Q Where did you meet Mr. DeLutro, sir?

A You mean the first time?

Q Yes. Five or six years ago?

A I really can't recall.

Q Do you recall who introduced you?

A My brother.

Q Do you recall where you were introduced?

A No, I can't recall.

Q Have you seen him regularly over the last five or six years?

A For a large only when I eat at -- I like to eat there, I like the food. When I eat in a restaurant.

Q At Raymond's?

A Right. I mean maybe once or twice I would see him at other places but it would be by accident, never by appointment. I never had an appointment.

Q Prior to the time you were going to other restaur-

ents and meeting Mr. DeLutro inadvertently?

A No. Not me personally, no. I may have seen him. I really dont' recall if I ever saw him.

Q How long have you known him?

MR. J. PANZER: That's been asked or answered two or three times now.

THE COURT: I will let it be answered for the last time, and I would remind the government that the Court will allow a fishing expedition when it is warranted, but when you have an attorney on the stand who is giving a simple point, that is all he said, I was there, I heard such and such,and that is the end of it unless. Unless there is a good special reason I think there is no need for cross.

Anything else?

MR AMOROSA: JUst how long has he known him, that is all.

THE COURT: How long?

THE WITNESS: Five or six years.

MR. AMOROSA: No further questions.

REDIRECT EXAMINATION

BY MR. J. PANZER:

Q Mr. Risoli --

THE COURT: You want to open it again?

MR. J. PANZER: No, just one question.

Q You referred to a conversation between you and Mr. DeLutro. Would you please tell us the gist of that conversation concerning this incident.

MR. AMOROSA: I object to it, your Honor.

MR. J. PANZER: It was opened by Mr. Amorosa on cross.

THE COURT: Yes, I will allow it.

A We were eating in the restaurant, and he sat down with us, as he does often, and he --

Q When you say he, who do you mean?

A Mr. DeLutro. And he was telling me that he got involved in this case --

Q Yes.

A -- and we --

MR. AMOROSA: I object to this. This is subsequent to the indictment in the case.

THE COURT: You brought it out in a way that calls for an explanation.

Did DeLutro tell t. .tness what to say? What really took place between the two of them. The inference was left that DeLutro may very well have gotten this witness to say something and what the witness is really doing is telling us what DeLutro said.

No, not at all. You can't do that without

giving the other side an opportunity to show there was nothing unholy about it, so to speak.

Go on.

Q Please answer the question.

A And he told me that he had gotten --

Q Even when you say he --

A Mr. DeLutro.

THE COURT: We know that. Go on.

A Mr. DeLutro told me he had gotten involved in this case, and in fact he showed me the indictment, and he asked my opinion about it. I didn't give him any opinion, but he says, you know the fellow that got me involved in this case was the fellow I had an argument with back in January of '74, when you were here. He asked me if I recalled what happened and I said I don't recall the words, I remember the argument and I remember the substance of the conversation. It took about a minute. So he said would you be willing to come to court and say that. I says if I was satisfied that this was the fellow.

MR. J. PANZER: No further questions.

THE COURT: All right. Mr. Amorosa.

MR. AMOROSA: Just one question, your Honor.

THE COURT: Yes. You can have many questions, because now there has been something else added and you have a right

to go into it.

RECROSS EXAMINATION

BY MR. AMOROSA:

Q Did Mr. DeLutro tell you how in June of 1975 he knew that it was that person who had the argument with him who got him involved in this case? Did he tell you how he knew that in June of 1975?

A No. That is just what he told me.

MR.AMOROSA: NO further questions.

MR. J. PANZER: No further questions.

THE COURT: Just one question.

THE WITNESS: Yes,sir.

THE COURT: Very often when a photograph is shown to a human being "Do you know this person?" The reaction is to try to grope for recollection, and quite often the result is that the witness actually believes that that photograph is of a person. It is really sort of a suggestion if you get what I am trying to say.

THE WITNESS: I understand.

THE COURT: So later on the person who looks at the photograph says "I am sure that is the one."

What he is really saying is that he is sure that that is the photograph.

Now, in your case DeLutro showed you a photograph.

THE WITNESS: No. His attorney did.

THE COURT: His attorney did. Before you saw the photograph did you have a distinct recollection of the human being depicted by that photograph?

THE WITNESS: In my mind, fairly I did, your Honor. I mean I wouldn't say that the photograph didn't prompt my memory. I only saw him for one minute.

THE COURT: There is the whole essence of what I wanted you to tell us one way or the other. Thank you, sir. Will you hereafter rememver in the course of your professional pursuit to have a little commiseration for witnesses.

THE WITNESS: Yes, your Honor.

THE COURT: Having experienced a little bit of it yourself. All right, thank you.

B1 mmjb 1 Risoli-redirect

MR. J. PANZER: Your Honor, may I?

THE COURT: Do you want the witness to be excused if you have nothing further?

MR. J. PANZER: I may have one question and I want the Court's indulgence. Mr. Amorosa opened up a line of inquiry where he asked the witness--

MR. AMOROSA: I object. The question should be put and then I will say whether we have an objection.

MR. J. PANZER: I ask the Court to take notice of the fact that Mr. Verzino's name is mentioned in the indictment.

MR. AMOROSA: We stipulate that.

THE COURT: What you need to do you have done.

MR. J. PANZER: No further questions.

THE COURT: Anything from any attorney? Does any other attorney have any question?

That is all.

(Witness excused.)

MR. J. PANZER: Will you get Mr. Zimmerman.

XX MURRAY ZIMMERMAN, a witness called on behalf of the defendant DeLutro, being first duly sworn, testified as follows:

THE COURT: Mr. Zimmerman, I say this to all

witnesses, and I want you to listen carefully: You are to keep your voice up so these ladies and gentlemen of the jury can hear every word. Do you understand?

THE WITNESS: Yes, sir.

THE COURT: And, secondly, you are not volunteer any testimony. If you are asked a question, just answer that particular question. Do I make myself clear?

THE WITNESS: Yes, sir.

THE COURT: If you blurt out something that is not called for, you may cause a new trial. We have been going here for three and a half weeks. Do you understand?

THE WITNESS: Yes, sir.

THE COURT: Be very careful.

THE WITNESS: Yes, sir.

THE COURT: You can't talk here the way you do out in the street. There are certain rules, and I got to see that you observe those rules.

THE WITNESS: Yes.

DIRECT EXAMINATION

BY MR. JOSEPH PANZER:

Q Mr. Zimmerman, please keep your voice up.

Do you know me?

A No, sir.

Q Did I ever speak to you in my life?

A Never, sir.

Q Please lean back.

THE COURT: If he more comfortable, he may stay that way. We try to do whatever we can to get the witness to feel at ease. My comments to the jury are the same. They have a burden. I try in my own way to have them know that I understand that they are under tension, as any person of responsibility would be. I want the witnesses to feel at ease. I don't want them to think this is a military institution. All I am concerned with is the truth.

Q Mr. Zimmerman, are you employed?

A I am, sir.

Q What do you do for a living?

A I am a supervisor of a warehouse, paper warehouse.

Q Where is that?

A Long Island City, sir.

Q Do you know Mr. DeLutro?

A I do, sir.

Q How long do you know him?

A I would say a little over three to four years, sir.

Q Do you have occasion to be a customer in Raymond's Restaurant?

A Many times, sir.

Q That is on 29th Street and Second Avenue?

A Yes, sir.

Q Did you have occasion to speak to Mr. DeLutro--

MR. AMOROSA: Objected to as leading.

THE COURT: Yes, it is leading.

Q Mr. Zimmerman, do you remember a date late in January--

THE COURT: No, that is suggestive.

MR. J. PANZER: I withdraw that.

Q There is a picture in front of you. Will you please look at this picture, Defendant DeLutro's Exhibit C in evidence.

THE COURT: He has looked at it. What is the question?

Q Did you ever see that man before?

A It looks familiar to me, sir, that I did see this individual, sir.

Q Will you please tell the Court and jury under what circumstances you saw this man before?

A It was over a year ago, I believe, sometime in January, I believe. I was at Raymond's having supper there.

Q May I interrupt you? What time, if you remember?

A It was late in the evening, sir, probably around ten, 10:30, around that.

Q Please continue. I am sorry I interrupted you.

A And I was having my supper there and I heard a loud commotion opposite me and I heard voices raised and then I saw this individual jump up and leave heading towards the door.

Q Did you hear what was said? If you did--

THE COURT: Leave him alone until he is finished and then go back. We are concentrating on what he is saying.

Go ahead, sir.

THE WITNESS: I am trying to remember. It has been a long time. All I know, I was having my dinner and I heard a commotion opposite me, a loud commotion, and I heard some remarks passed, something about wife, bothering wife, something, words to that effect. I just can't remember the exact terminology.

Then this individual got up and was walking out, and Mr. DeLutro, he got up and was yelling for this individual to come back. The other individual just waved to him and mentioned something I couldn't quite grasp, "I will see," or something like that.

Q When you say this individual, are you referring

to the picture, Defendant DeLutro's Exhibit C in evidence?

A That is what I am looking at, sir.

Q Do you know this man's name whose picture you see?

A No, sir.

MR. J. PANZER: No further questions.

CROSS EXAMINATION

BY MR. AMOROSA:

Q Mr. Zimmerman, have you ever seen that picture before?

A No, sir. This is the first time.

THE COURT: No, sir, is the answer.

THE WITNESS: No, sir.

Q Have you ever seen the man depicted in this picture before?

A No, sir.

Q You have never seen that man depicted in the picture before, other than the time you saw him in Raymond's? Is that what you mean?

A That is right.

THE COURT: Can you fix the approximate date when you recall this episode took place?

THE WITNESS: It was after Christmas. I think it was probably the latter part of January or something

like that.

Q Of what year?

A Oh, not this year. I think it was about 1974.

Q Have you ever told someone, have you ever been asked those questions in substance before, that you told us on direct examination?

A No, sir.

Q Never in your life?

A No, sir.

Q No one came to you and asked you those questions and asked you about what happened that night and you never told anyone? Is that correct?

A That is true, sir.

Q Who asked you to come here to testify?

A I was at Raymond's--

THE COURT: No, it is a simple question. Who asked you to come here to testify?

THE WITNESS: Mr. DeLutro.

Q When Mr. DeLutro asked you to come here and testify did he ask you the questions which were asked you on direct examination and did you give the answers that you gave here?

A No, sir, not those questions.

Q He just said to you, "Why don't you come in to

testify?"

A I told him that I remembered the commotion--

MR. J. PANZER: Let us get the answer.

THE COURT: You either fish or you cut bait. You either allow the witness to tell what DeLutro said.

MR. AMOROSA: Yes, but my way.

THE COURT: No. I want you to assure the Court that the whole thing will go in.

MR. AMOROSA: Yes.

THE COURT: And you ask permission.

MR. AMOROSA: Yes.

THE COURT: "I would like to develop it later, and may I have permission," and you go forward with just segments of it.

MR. AMOROSA: That is in substance what I am requesting.

THE COURT: I will allow you to do that.

MR. J. PANZER: May the witness finish his answer?

Q When did you have this conversation, sir, with DeLutro? Approximately?

A When I read in the paper--

THE COURT: No. He didn't ask you about papers. When? It is a date. That is all.

A Oh, about two months ago.

THE COURT: There is the answer. Next question.

Q About two months ago he asked you to come--

THE COURT: That is repetitious. I want you to stop that.

Q What did he ask you, sir?

A Can I answer it in my way?

THE COURT: You go ahead. I am going to have to take over on that. Go forward. Tell us.

A When it appeared in the newpaper--

THE COURT: No. Avoid that. I don't care about that. You were asked to concentrate on the question. You have got intelligence. Don't tell us about a newspaper. You are likely to eject something here. What did he say to you? What did DeLutro say and what did you say about two months ago?

A If I remember the commotion.

THE COURT: What did you say?

THE WITNESS: I daid I did, and if you need me as a witness, I will be a witness.

THE COURT: What else was said by you or by DeLutro on that occasion?

THE WITNESS: That is it.

Q Did he show you a picture at that time?

A No picture.

Q You had not seen the picture before now? Until you came into Court today?

MR. J. PANZER: That has been asked and answered.

THE COURT: He has a right on cross examination to check him on it, and you know it. Now, get up on substance, not on little picayune nothings. Let us go. It gets wearying after a while.

A This is the first time right now here.

Q Did you ever see any other picture of the person depicted in this picture prior to the time you came here?

A No, sir.

Q Have you ever in your life seen the person depicted in this picture other than the occasion in Raymond's Restaurant that you described?

A No, sir.

Q How often do you go to Raymond's Restaurant, sir?

A At least about three times a week.

Q How long have you been going there three times a week?

A I would say about two years, sir, roughly. I can't remember exactly.

Q Roughly?

A Roughly.

Q Since about the time it opened?

A Yes, sir.

Q And on the occasions when you go to Raymond's, do you always see there DeLutro?

A Most of the time.

Q Over the past two years?

A Right, sir.

Q Who owns Raymond's, sir?

A I am assuming the fellow Raymond.

Q What does Raymond do in Raymond's?

A Well, I guess what normally--

THE COURT: No, no, what does he do?

A He tends bar.

Q He tends bar?

A Yes.

Q Did Mr. DeLutro to your knowledge work for Raymond?

A Not to my knowledge, sir.

Q Did he ever tell you why he is there so often?

A No, he has not, sir.

Q And you met him when you began to go to Raymond's?

A Yes, sir.

Q Did you know him prior to the time you began to go to Raymond's two years ago?

A Yes, sir.

Q How long have you known him?

A Approximately three to four years, sir.

Q Mr. Zimmerman, where are you working now, sir?

A I work in Long Island City, sir.

Q What do you do in Long Island City?

A I am a supervisor of a plant warehouse.

Q What kind of a plant warehouse is that?

A Paper, sir.

Q How long have you been working there, sir?

A Two years, sir.

Q On a steady basis?

A Yes.

Q Prior to that, sir, where did you work?

A Another paper company down the street.

Q In the same area?

A Yes.

Q How long did you work there on a steady basis?

A Eight years, sir.

Q Who were you in Raymond's with that evening, sir?

A Myself, sir.

Q You were by ~~yourself~~?

A Yes, sir.

Q Where did this commotion take place vis-a-vis where you were sitting?

A Right opposite me, sir, just a little to the right.

Q Isn't it dark in Raymond's, sir?

A Almost similar to this, sir.

Q Oh, it is not dark at all?

A Not that dark.

MR. AMOROSA: No further questions.

MR. J. PANZER: No further questions.

THE COURT: Any questions by any counsel?

Mr. Zimmerman, step down, you are through. My advice to you is to leave the Court House and go about your work.

(Witness excused.)

THE COURT: Do you think you would like to have a little recess? You have been sitting there for an hour and a half. I see the suggestion gets a warm reception. Very well. Let's take the jury to the jury room, Mr. Clerk.

(Jury excused.)

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M A R Y A N N F A S I O, called as a witness on behalf of the defendant DeLutro, having been first duly sworn, testified as follows:

THE COURT: Is it Miss or Mrs.?

THE WITNESS: Mrs.

THE COURT: Mrs. Fasio, you are now a sworn witness. The jury has to hear every word. Otherwise, they can't get everything you say, right? So raise your voice.

Number two, you cannot talk about this matter the way you would outside in your home or on the street. You have to abide by certain rules of law, and one of them is that the witness must not under any circumstances say anything that is not called for by a question.

Do you understand what I mean?

THE WITNESS: Uh-huh.

THE COURT: So you just answer the question that

is put to you. You don't volunteer anything. You don't add anything. Do you understand what I mean?

THE WITNESS: Uh-huh. Okay.

THE COURT: When you are asked "When were you born?" That calls for a date, right?

THE WITNESS: (Witness nods.)

THE COURT: It does not entitle you to give a place, it doesn't entitle you to give your father's name. Do you get it?

THE WITNESS: Okay.

MR. J. PANZER: May I proceed?

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. J. PANZER:

Q Mrs. Fasio, are you married?

A Yes.

Q And you live with your husband?

A Yes.

Q Do you know Mr. DeLutro?

A You --

Q Do you know Mr. DeLutro?

A Yes. Uh-huh.

Q Do you know him as Tony West?

A Yes.

Q Did you have occasion to come into a restaurant, Raymond's, where you see Mr. DeLutro?

MR. AMOROSA: Objection, your Honor. It is leading.

THE COURT: It is leading and the objection is sustained.

Where have you seen Mr. DeLutro, madam, in the past couple of years?

THE WITNESS: Well, in the restaurant.

THE COURT: And anywhere else?

THE WITNESS: Not -- no.

THE COURT: And by "the restaurant," you mean --

THE WITNESS: Raymond's.

THE COURT: Very well.

Q Now, there is a picture in front of you, Defendant DeLutro's Exhibit C in evidence. I ask you to look at that picture.

A Uh-huh.

Q Do you recognize that man? Yes or no.

A Yes.

Q And do you remember when you saw that man previously to today?

A It was in the restaurant.

Q And how many times did you see him?

A One time.

Q Do you remember when you saw him?

A It was in -- well, I don't know, it was some time in the winter, I guess, end of --

Q I can't hear you.

A It was during the winter, I know, some time in -- I guess like the end of January or so.

Q Of what year?

A Last year.

Q 1974?

A Yes.

Q And please tell the Court and jury under what circumstances you saw this man whose picture you just identified?

A Well, it was --

Q Keep your voice up.

A There was a commotion like in the restaurant. He had come in and was saying something to Tony about his wife, and Tony, I don't know -- you know, that was more or less carrying on a little bit of a commotion there.

THE COURT: Yes, but what did you hear? That's all he wants to know. What did you hear him say and go on between the man whose photograph you looked at and Mr. DeLutro?

What was said? We don't want you to give us the exact words but what were they talking about?

THE WITNESS: It was just something he said to him about his wife and Tony.

Q Who said to who?

A This man said to Tony something between him and his wife.

Q Between who and his wife?

A Between Tony.

Q You mean Tony DeLutro?

A Right.

Q And whose wife?

A This man's wife.

Q Where were you at the time that you overheard this?

A In the restaurant.

Q How far away were you from Mr. DeLutro and this man whom you identified in the picture as having seen before?

A Well, we were in the rear of the restaurant there.

Q How far away? How many feet?

A Well, I don't know. Ten feet or so.

Q And you overheard this very clearly?

A Yes.

Q Did you hear anything happen?

A I just saw him, this man, get up and leave. I heard Tony say something "You're crazy," or that was pretty much it. It was just a commotion.

Q Were you there eating or what were you doing?

A No, having dinner.

Q With whom?

A My husband.

Q What's his name?

A Ed, Edward.

MR. J. PANZER: No further questions.

CROSS EXAMINATION

BY MR. AMOROSA:

Q Mrs. Fasio, where were Tony West and this other person you saw standing in the restaurant at the time, or sitting, whether it is sitting or standing, at the time of this commotion?

A Well, they were up closer like against the side wall there.

Q Were they in the kitchen or in the restaurant area?

A No, out in the restaurant.

Q What's the lighting in Raymond's?

A -- It's like a kind of medium lighting, I guess.

Q It is not dark at all in Ra mond's?

A You know, it's -- no, not dark, but, you know, kind of medium light.

Q Is the lighting similar to the lighting in here?

A No, a little darker.

Q It is darker.

And the person that is depicted in that picture, is it your testimony, Mrs. Fasio, that you have only seen that person one time in your entire life?

A Yes.

Q Is it your testimony also that you have only seen a picture of that person one time in your entire life?

A No, I saw -- I seen the picture twice.

Q The same picture?

A Uh-huh.

Q Did you see any other pictures of this person besides this picture prior to your testimony here?

A No.

Q This is the only picture you saw of this person?

A Yes. Uh-huh.

Q So you have seen the person depicted in the picture once in your life and that was at Raymond's, is that correct?

A I'm sorry?

Q You have seen the person depicted in the picture --

A Yes, uh-huh.

Q You looked upon him once in your life?

A Yes. Right.

Q And that was at Raymond's?

A Right.

Q In late January?

A Yes. Some time.

Q Of 1974?

A Right.

Q And now you have seen this picture three times in your life, is that correct?

A No, twice.

Q Twice, including today?

A Oh, no.

Q So including today it is about three times?

A Right.

Q Who showed you the picture, Mrs. Fasio, the first time?

A Mr. Panzer.

Q Who showed you the picture the second time?

A Mr. Panzer.

Q The first time you were shown the picture did you say, in response to a question, "This is the person I saw that evening during the commotion"?

A Yes. Uh-huh.

Q Did Mr. Panzer tell you why he showed you the picture the second time?

A No. I guess he just wanted to make sure or -- you know, just that he had --

Q How often do you go to Raymond's, Mrs. Fasio?

A Not often. Once a month, maybe. Not even.

Q Over the past, how long would you say?

A Maybe two years or a year and a half.

Q Do you go on the average of once a month, would you say?

A Yes. Maybe once a month. Not ev n that.

Q When you go there, is Mr. West there?

A Sometimes.

Q Only sometimes?

THE COURT: Answer, please. Only sometimes? Yes or no?

THE WITNESS: Only sometimes, yes.

Q Would you say, Mrs. Fasio, that you have a very good memory for faces?

A Yes.

Q You say you have a very good memory for faces?

A Uh-huh.

Q Would you say it is better than the natural or average memory for faces?

A No.

MR. J. PANZER: Your Honor, that's calling for a conclusion on the part of the witness.

THE COURT: No, it isn't. Objection overruled.

Q Would you say you have a better than average memory for faces?

A No.

Q So you would say you have an average memory for faces?

A Yes.

THE COURT: You must speak up. You look at television, you see jury trials. Do the witnesses go like you do?

THE WITNESS: I don't know. I don't pay attention.

THE COURT: Don't you hear them speak out? When you look at the jury trials on television, don't you hear witnesses?

THE WITNESS: Yes.

THE COURT: So speak up. This is your chance

to tell the family television has got nothing on you, you were in a courtroom, a United States Court, you were an important witness. You can blow it up all you want.

Let's speak up now.

Q Does your husband know Mr. West, Mrs. Fasio?

A Yes.

Q Was he there that evening?

A Yes.

Q Is h also able to identify the picture?

A Yes.

Q He has already identified the picture?

A Yes.

Q In your presence?

A Yes.

Q When Mr. Panzer showed you the picture, your husband was there also, is that correct?

A Yes. That's right.

Q Was he there on both occasions you were shown the picture prior to your appearance here?

A Yes.

Q So you went down to Mr. Panzer's office on two occasions and on both those occasions Mr. Panzer showed you this picture in the presence of your husband?

A One was the office, yes.

Q One time at the office and another time another place?

A Uh-huh.

Q And your husband was present on both occasions?

A Yes.

Q Does your husband know Mr. West?

MR. J. PANZER: It's just been asked and answered.

MR. AMOROSA: Just a foundation question.

THE COURT: I will allow it.

Does your husband know Mr. West?

THE WITNESS: Yes.

Q How long has he known Mr. West?

A I would say two years or so.

Q Does he also know him from Raymond's Restaurant?

A Yes.

Q What is your husband's first name?

A Edward.

Q Edward Fasio?

A Right.

Q Do you know Mr. Zimmerman?

A No.

Q Can you recall what the other people who were in the restaurant that night looked like?

A No, not really. There was no one that I knew in the restaurant.

Q Are there candles on the table in the restaurant, Mrs. Pasio?

A No.

Q There are no candles on the table?

A No.

Q Where does the lighting come from in the restaurant?

A I guess the ceiling.

Q Do you recall?

A It seems it is, you know, from the ceiling.

Q Your best rec lection is from the ceiling?

A Right.

Q Do you know the bartenders in Raymond's?

A Yes. I know who they are, yes.

Q Who are the bartenders?

A Rossi and Raymond.

Q Pardon me?

A Rossi and Raymond.

Q Is there another bartender you know of who works in Raymond's besides this fellow Rossi and Raymond?

A No.

Q Do you know Raymond's last name?

A No.

Q Who owns Raymonds, madam?

A I don't know.

MR. AMOROSA: No further questions.

REDIRECT EXAMINATION

BY MR. J. PANZER:

Q Mrs. Fasio, is Rossi the man's last name or his first name?

A I don't know.

Q You just call him Rossi?

A Yes.

Q Could it be Rosario?

A I don't know.

MR. AMOROSA: Objection.

THE COURT: Objection sustained.

MR. J. PANZER: No further questions.

THE COURT: Anything by any other counsel?

MR. AMOROSA: No, sir.

THE COURT: You may step down.

(Witness excused.)

MR. J. PANZER: I would like Mr. Rosario Oddo called back to the stand for this reason, about Rossi, what he is known by.

THE COURT: I don't understand what you're

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saying.

MR. J. PANZER: The witness said "Rossi." I want Mr. Oddo to explain whether his name is Rossi, that's all.

THE COURT: Mr. Who?

MR. J. PANZER: Mr. Oddo, the man who testified.

MR. AMOROSA: He testified his name was Oddo, but I have no objection.

THE COURT: You want him called back?

MR. J. PANZER: Please.

THE COURT: All right.

R O S A R I O O D D O, recalled as a witness by the defendant DeLutro, resumed the stand and testified further as follows:

THE COURT: Mr. Oddo, you understand you are giving further testimony under oath. You know I don't have to swear you over again.

FURTHER DIRECT EXAMINATION

BY MR. J. PANZER:

Q Your first name is Rosario?

A Yes.

Q Are you known by any other name?

A Yes, sir. Rossi.

MR. J. PANZER: Nothing further.

THE COURT: Anything further?

MR. AMOROSA: Yes, sir.

FURTHER CROSS EXAMINATION

BY MR. AMOROSA:

Q Your real name is Rosario, but you are known as Rossi, is that correct?

A Yes.

Q Mr. Rosario, where were you from the time you testified here earlier until now?

A Where was I?

Q Yes.

A In the room.

Q You were in the room back there?

A Yes.

Q With the other -- did a young lady just come back into the room?

A Yes.

Q Was she in there while you were in there before?

A Yes.

Q Can you recall the phone number now? You said you were a little confused.

A Of Raymond's Restaurant?

Q Yes.

A Yes.

Q You can recall it now?

A I recalled it as soon as I walked out the door before.

Q What is the number?

A 679-9418.

Q Now, that is the number of which phone?

A The pay phone.

Q Do you know the number of the other phone?

A No, I never knew that number.

Q You had a period of confusion?

A Exactly.

Q Do you know now whose number that other number was?

A No, I don't. I am going to try to find out.

Q You recall, don't you, that on the night that you saw this argument that young lady who just walked out was there also?

A Yes.

THE COURT: You see, we always forget. Suppose somebody reads the record. Who is that young lady? Do you know her by name?

THE WITNESS: No, I don't know her name.

Q You never knew her name?

A No, I know her husband.

Q What is his name?

A Ed.

Q What is his name?

A I believe Fazio.

Q Do you know Mr. Zimmerman?

A Zimmerman?

Q Yes.

A Maybe if I see him.

Q Do you see anyone else in the back room there that you have seen?

THE COURT: In the room back of the courtroom.

Q That you had seen the same night at Raymond's, at the time you saw this argument between DeLutro and this man you knew as Fazio?

A Yes.

Q You saw the people there?

A Yes.

Q And they were there that night?

A Yes.

Q You remember all those people were there that particular night?

A I remember the girl was there. I believe the other man was there.

Q How about that well-built man? Did you see him in the back room? There was a well-built man, approximately my height.

A A well-built man?

Q I can't recall his name right now, but he is an attorney.

A A well-built man?

MR. J. PANZER: Of one my witnesses just walked in the Court. He doesn't know he is not supposed to.

Outside, please. I'm sorry to interrupt. There is a witness room in the back, sir.

MR. AMOROSA: I withdraw the question and I have no further questions.

THE COURT: Step down.

(Witness excused.)

THE COURT: Next witness.

MR J. PANZER: Mr. Fazio. He just stepped into the courtroom.

EDWARD FAZIO, a witness called on behalf of the defendant DeLutro, being first duly sworn, testified as follows:

THE COURT: Mr. Fazio, you are about to give testimony. Will you please keep your voice up so the jury can hear you, and keep your voice up all the time. Will you face them. They are the ones to have to hear every word.

THE WITNESS: Yes, sir.

THE COURT: Just answer the question that is asked of you. Don't volunteer a thing. Do you understand

that?

THE WITNESS: Yes, sir.

XXX

DIRECT EXAMINATION

BY MR. JOSEPH PANZER:

Q Are you employed?

A Yes.

Q Where are you employed?

A I am employed at the Broadway Theater.

Q Where is that located?

A 53rd Street and Broadway.

Q What is your occupation there?

A I am the ticket man and treasurer.

Q You spoke to me about this case?

A Yes, sir.

Q I asked you to look at the picture in front of you, Defendant DeLutro's Exhibit C in evidence. Do you recognize that man?

A Yes, sir.

Q When is the last time you saw this man?

A A long time ago.

Q Do you remember the year and the approximate date?

A More than a year, the early part of last year.

Q Would you say what month?

A Late January, early February.

Q Were you and your wife customers in Raymond's Restaurant on 29th Street and Second Avenue at a time late January or early February of 1974?

A Yes.

Q Do you remember an incident happened concerning this man?

A Yes.

Q Will you please tell the Court and jury what happened? What were you doing there and what happened?

A I was there having dinner with my wife and there was an argument.

Q Between whom?

A Between this man and another gentlemen in the courtroom.

Q Who?

A That man right there (indicating).

Q You mean DeLutro?

A Yes.

Q Go ahead.

A They were arguing, a lot of yelling and shouting, and it was all with this man here in the picture, about this man's wife.

Q How far away were you from Mr. DeLutro and this

man at this time?

A A little further than we are right now.

Q Could you hear everything?

A I don't know about ever thing. What I did hear, I heard this man sitting there.

Q DeLutro, you mean? Do you know him?

A Yes, I do.

Q How long do you know him? When I say "him," I mean Mr. DeLutro.

A About two years, about two and a half years.

THE COURT: How do you refer to him when you greet him?

THE WITNESS: I refer to him as Tony.

THE COURT: Mr. DeLutro?

THE WITNESS: No, Tony.

THE COURT: You refer to Mr. DeLutro as Tony?

THE WITNESS: Yes.

Q You and your wife were in my office when I showed you this picture?

A Yes.

Q And I showed it to you last night?

A Yes.

Q Did you see it any other time, other than those times?

A Not prior to those two times.

Q You didn't hear exactly what happened, but you heard "wife"?

A All I remember--I can't quote it word for word, but something about, "Your wife! What! Are you crazy?"

Q Who said, "What, are you crazy?"

A Tony.

Q And what did the other man in the picture do, if anything?

A He got up and started towards Tony. He jumped up out of his seat.

Q What happened?

A There were two or three other fellows there and they calmed the situation.

Q Did he finally leave the restaurant?

A Yes.

Q Did Mr. DeLutro go after him?

A No.

MR. J. PANZER: No further questions.

CROSS EXAMINATION

BY MR. AMOROSA:

Q When was the first time you saw the picture, sir?

A Last week sometime.

Q Have you ever seen this man on any other occasion than that occasion that late January in Raymond's Restaurant?

A Not to my knowledge, no.

Q How long would you say you were looking at him at that time in Raymond's Restaurant?

A Two minutes, possibly five.

Q The argument was a long argument.

A Well, not really. It took about three to five minutes to get everybody calmed down again.

Q Would you take up the exhibit in your hand, please. What does it reflect of the man?

A I don't understand the question.

Q Does it reflect his face?

A Yes.

Q Does it reflect anything else besides his face?

A No.

Q Does it reflect his hair?

A It was combed much neater the night I saw him.

Q Do you remember how it was combed?

A Like hair would be combed.

Q Did he have a hat on?

A No.

Q What was the lighting in Raymond's?

A About the same as it is--I would say medium light.

Q Where does the light emanate from? The ceiling? The sides? Do you recall?

A The ceiling, yes, primarily the ceiling.

Q And you can see across the room from a distance?

A Very definitely across the room.

Q From a distance from me to you you can see clearly in the light?

A Absoutely.

Q And that has been the same lighting as existed in Raymond's from the time you began going there until now?

A Yes.

Q Is that correct?

A Yes.

Q How often do you go there, sir?

A Sometimes twice a week, sometimes once a week, sometimes three times a week. It varies, depending on whether or not I am in the neighborhood.

Q Has the layout of Raymond's changed any since the time you saw this?

A No, sir.

Q You are sure it was late January or early February?

A Yes, it was after the holidays; that would be sometime in January, late January or early February.

Q And you are sure you heard the word "wife"?

A Wife, positive, absolutely.

Q Do you consider yourself a person with a very good memory?

A Yes, sir.

Q For faces?

A Yes, sir, absolutely.

Q Better than an average memory for faces?

A Yes, I would say so.

Q When you were shown these pictures--

THE COURT: Pictures?

MR. AMOROSA: I'm sorry, your Honor.

THE COURT: Even though my eyes are closed, my ears are open.

MR. AMOROSA: They certainly are.

Q Have you ever seen another picture of the person depicted in that picture?

A No, sir.

THE COURT: On how many occasions did you see that person in the flesh?

THE WITNESS: Once that I recall.

THE COURT: Thank you.

Q And you saw him twice depicted in a picture?

A Yes.

Q And it was this picture before you?

A Yes.

Q And the first time was when?

A Two weeks ago. Something like that.

Q And your wife was present when you were shown the picture?

A Yes.

Q And you saw the picture again after that? When was that?

A Last night.

Q Was your wife also present at that time?

A Yes, she was.

Q Did you or your wife aid each other in picking out the picture in any way?

A No.

Q You both had independent recollections of that picture?

A Yes.

Q Did you ever discuss your testimony with your wife in connection with what was said?

A Yes.

Q You have?

A Yes.

Q And you both agree independently that the word "wife" was said?

A Yes.

Q Independent?

A Yes.

MR. AMOROSA: No further questions.

MR. J. PANZER: No questions.

THE COURT: Any questions by any counsel?

You are excused.

(Witness excused.)

J E R O M E R O S E N P E R G, a witness called on behalf of the defendant DeLutro, being first duly sworn, testified as follows:

THE COURT: Mr. Rosenberg, I say this to all witnesses--I am not singling you out--number one, you are a sworn witness. The jury has got to hear every word that comes out of your mouth. Therefore, you got to speak loudly and slowly, so they can hear and understand what you say.

Next, you are not under any circumstances to volunteer anything. You are asked a question. You answer just that question. Do you understand that?

THE WITNESS: Yes, your Honor.

THE COURT: It is as simple as that.

THE WITNESS: That is correct, your Honor.

XXX DIRECT EXAMINATION

BY MR. JOSEPH PANZER:

Q Mr. Rosenberg, do you know me?

A Yes, I do.

Q When for the first time did you meet me?

A At the Federal Detention Center at West Street.

Q How long ago?

A I believe it was at the end of June.

Q What year?

A 1975.

Q Do you know Mr. Tony DeLutro, known as Tony West?

A No, sir.

Q Did you ever speak to him?

A No, sir.

Q Did you ever have any communication with him whatsoever?

A No, sir.

Q Now, Mr. Rosenberg, you are incarcerated at present in Clinton Prison at Dannemora? Is that true?

A That is correct.

Q Will you please tell this Court and jury what crime you were convicted of?

A Yes, sir. I was convicted in the year of 1962 for the murder of two police officers.

Q How old were you when you were convicted of the crime of murder?

A 25 years old.

Q How long have you been in prison?

A 14 years.

Q What sentence did you receive?

A At first I received the death sentence and then I was commuted to life.

Q Are you presently serving your time in state prison?

A Yes, Dannemora.

Q What state prison?

A Clinton State Prison, Dannemora, New York.

Q You appear here pursuant to an order of Judge Cooper?

A That is correct, sir.

THE COURT: When an application is made to the judge for an order directing a prisoner to be produced, that takes more than just a telephone call. It has to be an order. The Court must have an application, it must

hear the reasons for it. Anybody can apply to the judge for such an order when the application has merit. And there was such an application made by counsel for the production of this witness, and I was satisfied there was merit to the application and, therefore, I signed the order. That means that the warden has to recognize that order by Judge Cooper, has to have that witness brought down here, has to have someone down here watching him every second, and return him when he is through.

This is not a simple ten cents affair; it is heavily involved.

Q Now, Mr. Rosenberg, you were 25 years old at the time you were convicted of the murder of two policemen?

A Yes.

Q Was that in a holdup?

A Yes, sir.

Q And at that time what type of an individual were you?

A At that time--

MR. AMOROSA: Your Honor, I object to this question.

THE COURT: Sustained.

Q Since you have been in prison have you made an

effort to rehabilitate yourself?

MR. AMOROSA: Your Honor, he can save that for redirect.

THE COURT: I think so. I think right now you put the questions that deal with the purpose that caused you to bring him here, and after that is developed then you may approach the other point that you seem to be concerned with.

At any rate, you will have an opportunity to develop that before the witness leaves the stand.

Q During the time you have been in prison have you studied law?

A Yes, I have.

Q Will you please tell this Court and jury what schools you studied law from?

MR. AMOROSA: Objection.

MR. J. PANZER: Subject to connection.

A While I was in the death house I went through extension studies at Boston University to study law to try and help myself.

THE COURT: You mean by correspondence?

THE WITNESS: Correspondence course, your Honor.

THE COURT: What did that mean? You got papers?

THE WITNESS: Yes.

THE COURT: And you got instructions in those papers?

THE WITNESS: Yes, and textbooks.

THE COURT: And then you were given an examination?

THE WITNESS: Yes, your Honor, and I graduated and I received a certificate in Criminal Law and Procedure. That was when I was in the death house.

Subsequently I was transferred to Attica.

THE COURT: When did you get the certificate?

THE WITNESS: '65.

THE COURT: How long a period of study?

THE WITNESS: That took me 11 months for the certificate.

THE COURT: When you say certificate, what was that a certificate of?

THE WITNESS: From Boston University Extension, Criminal Law and Procedure.

THE COURT: It had certified that you had taken that course?

THE WITNESS: Yes.

THE COURT: But you got no degree?

THE WITNESS: Yes, I did.

THE COURT: What degree did you get?

THE WITNESS: I got a Bachelors Degree and Doctors Degree subsequently.

THE COURT: Tell us about that.

THE WITNESS: I was transferred from the death house to Attica State Prison, and I went to the Blackstone School of Law. After a period of years I received my Bachelor of Law degree, LLB.

THE COURT: From where?

THE WITNESS: From the Blackstone School of Law. I had the degrees right here.

I then took a post graduate study course and specialized in Constitutional Law, and I received my Doctors in Law degree, which is an LLD, so I have two degrees and a certificate in law.

Q Now, Mr. Rosenberg--

THE COURT: The Court will afford counsel an opportunity to introduce those certificates, if counsel wishes.

MR. J. PANZER: Hand me those certificates, would you?

THE WITNESS: Yes,

THE COURT: He said so.

THE WITNESS: Excuse me, your Honor, I have the certificate from Boston and my Bachelor of Law degree.

The Doctors degree was destroyed in the Attica rebellion.

THE COURT: Show it to the Court and jury.

MR. AMOROSA: These documents are not in evidence. They were not offered.

MR. J. PANZER: I offer them in evidence.

THE COURT: Are you offering them?

MR. J. PANZER: Yes, your Honor.

THE COURT: In evidence or only for identification?

MR. J. PANZER: I want them first marked for identification.

THE COURT: I don't want anything put on them; just put a piece of paper and a clip and attach it.

MR. J. PANZER: I didn't hear you, Judge. I'm sorry.

THE COURT: Mr. Chance had that in mind. He did not want us to do anything to disfigure the document.

What are they, Mr. Clerk?

THE CLERK: They will be Defendant DeLutro's D and E for identification.

(Defendant DeLutro's Exhibits D and E marked for identification.)

Q Showing you Defendant DeLutro's Exhibit D and Exhibit E, I ask you if those are the diploma and

certificate that you received from the respective schools?

A Yes, sir.

MR. J. PANZER: I offer them in evidence.

MR. AMOROSA: May I see them?

Judge, may I have a short voir dire?

VOIR DIRE EXAMINATION

BY MR. AMOROSA:

Q Have these documents been marked in any other Court before in evidence?

A When I represented other inmates in Courts.

Q They were received in evidence?

A Yes.

THE COURT: Wait until the question is finished.

THE WITNESS: Correct, your Honor.

Q Is that the only Court in which they have been marked?

A Yes.

Q And accepted in evidence?

A And received.

MR. AMOROSA: No objection.

THE COURT: They will be considered in evidence. Mark the attached piece of paper.

(Defendant DeLutro's Exhibits D and E received in evidence.)

THE COURT: The admission are of a fragile nature. It might be a good idea just to have preserved for the record what they are.

Exhibit E is from the Blackstone School of Law, established A.D. 1890, Chicago, U.S.A.

By nomination the administrative staff has conferred the degree of Bachelor of Laws to Jerome Rosenberg, who has fulfilled all the requirements prescribed by the school for that degree.

In testimony whereof, this recognition of scholarship is granted, the seal of the school affixed, and signatures of its president, dean and secretary thereto attached.

Given at Chicago, in the State of Illinois, U.S.A., this 4th day of December in the year of our Lord, 1967.

President: M.C. Vistashing; Dean, A.M. Kirschoff; Secretary, G.W. Harms.

And then there is affixed the seal.

DeLutro Exhibit D reads:

The Commonwealth of Massachusetts, Department of Education, Division of University Extension, Boston. July 20, 1965:

Jerome Rosenberg, 354 Hunter Street, Ossining,

New York, 1956."

This is to certify that you have satisfactorily completed by correspondence instruction in the course described below: Criminal Law and Police Procedure, Parts 1 and 2; average, B.

That, I take it, is the mark.

And it is signed Franklin B. Hawkes, Director.

This certificate is not valid if it does not bear the seal of the Department of Education or if it is altered in any way.

Well, where is the seal, Mr. Rosenberg?

THE WITNESS: It is right there; it is printed in the paper. It is not a gold seal. It is one of them machines that they just stamp it.

THE COURT: You are right. It is some kind of a marking that indicates possibly the existence of a seal.

All right.

BY MR. M. PANZER:

Q Now, Mr. Rosenberg, during your stay in prison have you been consulted by inmates, other inmates, concerning letal problems?

A Yes, that is my job.

Q And have you advised inmates concerning their legal problems?

A I definitely have.

Q On how many occasions?

A Well, I must have advised hundreds. As far as representing them in open court, 22 times.

Q You represented them with the permission of the Court? You represented other inmates 22 times?

A Yes.

Q What courts?

A In the federal courts in the Southern District, in the Eastern District, and in the state courts, the Supreme Court.

Q Mr. Rosenberg, I ask you to look at a picture in front of you, Defendant DeLutro's Exhibit C in evidence and ask you if you ever saw that man?

A Definitely.

Q During the year 1974 in what prison were you during the month of March?

A Ossining State Prison.

Q Is that known as Sing Sing?

A The old name was Sing Sing. They changed it to Ossining.

Q When did you arrive at Sing Sing?

A I arrived at Sing Sing, I believe it was after the Attica Rebellion in April 20 or 21, 1972.

Q How long did you [illegible]

A I left Sing Sing about March, 1974.

Q During the month of March? Did you ever have occasion to meet a man whose picture you just looked at?

A Definitely.

Q Do you know his name?

A Tony Verzino.

Q Has he got a nickname?

A Yes, Tony Vase.

Q And will you please tell this Court and jury under what circumstances you met Tony Verzino, otherwise known as Tony Vase, in the month of March in Sing Sing prison?

A Well, my job in Sing Sing at this time was in the law library representing inmates, giving advice and representing different inmates in court. This Tony Vase, I never knew him, and he came over and he was looking for me. A fellow said, "Ther is Tony Vase in the prison looking for you; he needs some legal help."

So in Sing Sing they got a block for city prisoners. I was in what is known as Cadre block; I was in Sing Sing doing time, where Tony Vase was --

Q Excuse me. Cadre is spelled c-a-d-r-e?

A Yes.

Q What does Cadre denote?

A That means I was in prison doing time, I was a state prisoner. Tony Vase was in a block for city prisoners --

MR. AMOROSA: This has nothing to do with the circumstances under which he met this man. He is going way beyond. I object.

THE COURT: Verzino was one of your principal witnesses, and this witness is about to tell us what Verzino said to him. I should think it would be highly important, not only as to where he was, where this conversation took place, but I should think it would be imperative to identify with exactitude. Objection overruled.

Q Continue, sir.

You say Mr. Verzino was in a block?

A Yes, at that time the prisoners in A block were not allowed to go to the law library. In other words, we had to go to their block to see them. So I went to A block and I met him and he wanted to know, he had a search warrant that was issued against him. He was arrested, I believe, on February 25th of 1974. He wanted to know if it was a valid search warrant, and he showed me the search warrant, and in it it had "Reliable Informant," and he wanted to know if it was permissible for them to

got this search warrant and I went through the search warrant, I got a copy of the search warrant, and I told him as far as I could see my legal opinion was it was a valid search warrant.

Q May I see a copy of that search warrant?

A This is the one he gave me.

Q Did he leave that paper with you?

A He gave it to me and then he left and then I left and I never got it back to him.

MR. J. PANZER: May I have it marked Defendant DeLutro Exhibit F for identification.

(Defendant DeLutro's Exhibit F was marked for identification.)

Q I show you Defendant DeLutro's Exhibit F for identification and ask you if this is a copy of the search warrant that Mr. Verzino showed you in Sing Sing Prison during the early part of March?

A Yes.

Q 1974?

A Yes, this is the search warrant that he wanted me to analyze.

MR. J. PANZER: I offer it in evidence.

MR. AMOROSA: There was a ruling with regard to this same paper.

BEST COPY AVAILABLE

THE COURT: Do you object?

MR. AMOROSA: We object.

THE COURT: Objection sustained.

Q Will you take that paper and put it back in your file, please. He showed you a paper?

A Yes, sir.

Q What did he want you to do?

THE COURT: It can be said the paper deals with an application for a search warrant. That is apparent. I don't see why that can't be revealed to the jury.

Q He showed you this application for a search warrant and what did he say to you? He wanted your opinion?

A He wanted my legal opinion and any opinion I could give him to knock out the search warrant.

Q What did you do?

A The law in the area of reliable informant was legal --

MR. AMOROSA: We are not interested in the law. We are interested in the conversation.

THE COURT: Yes, we got to have the conversation. We can't but feel a certain amount of encouragement that you under those conditions went forward and made use of your time; you deserve credit for that. But remember, you are a witness here. And, by the way, who entitles you

You are not a member of the bar, are you?

THE WITNESS: No, your Honor, I agree, but I have been permitted to represent people in courts.

THE COURT: That does not entitle you to say, "I gave them my legal opinion." A person who is not a doctor would not have the right to say "I gave him a prescription." He may know a lot about medicine, but he is not entitled to write a prescription. So you are not entitled to say, "I gave him a legal opinion." That only goes with a man who has been admitted to the bar. You might reflect on that. Be careful about that --

Q Mr. Rosenberg, you gave your opinion?

THE COURT: Would you mind if I finish?

MR.J. PANZER: I thought you had finished.

(A discussion was had off the record and thereafter a luncheon recess was taken to 2:15 p.m.)

* * * * *

* * * * *

JEROME ROSENBERG, resumed.

THE COURT: Please take your seat. You understand you are resuming your testimony under oath.

THE WITNESS: Yes, your Honor.

DIRECT EXAMINATION (Continuing)

BY MR. J. PANZER:

Q Mr. Rosenberg, I believe we were at the point where

I asked you whether Mr. Verzino, or Tony Vase, as you have stated, came to you for an opinion as to the contents of that piece of paper or those pieces of paper which you perused?

A Yes, he did.

Q And did you have a conversation with him?

A I told him there was no validity to them.

THE COURT: Did you have a conversation with him?

Q Yes or no.

A Yes.

Q Did you give him some advice about it, yes or no?

A Yes.

Q I believe you said you saw him twice. Was this at the first or the second meeting?

A This was at the first meeting I met him in A block when he had the red union on.

Q You went to see him?

A I went to see him because he wasn't allowed down the hill.

Q Was that because of a message you got that he wanted to see you?

A Yes, inmates told me he wanted to see me, Tony Verzino.

Q Are you sure the man whose picture you looked at, defendant DeLutro Exhibit C, is the same man you came to see and had a conversation with concerning the pieces of paper?

A Yes, this is definitely him. If -- all right.

Q Did there come a time when you saw him again?

A Yes.

Q Was that in Sing Sing Prison?

A The same prison, yes.

Q And how long a time helapsed between the first and second meeting?

A I am not sure. It could have been one or two days, because the second time he was brought down to the law library where I worked by a sergeant.

Q Were you in the law library?

A I was the head counsellor of the law library for the inmates.

Q At this time did he come to see you?

A Yes. With other inmates. They came down -- they were allowed down. A Sergeant Maginnis brought them all down at the same time.

Q Did you have a conversation with Tony Verzino in the law library?

A Yes.

Q Can you pinpoint with more or less a degree of accuracy whether it was in the early part of March, the middle part of March or the late part of March of 1974?

A The records at Sing Sing -- I usually make a notation --

THE COURT: I am sorry, one of the rules you should have learned is when a witness is asked a question, especially when a Judge warns a witness in advance not to answer anything but yes or no, you are violating what I asked you to do.

THE WITNESS: I am sorry, your Honor.

THE COURT: That wipes it all off. The question calls for a yes or no answer. Listen to the question. Mr. Court Reporter, read Mr. Rosenberg the question that pends before.

(Question read.)

A Yes.

THE COURT: That's the answer.

Next question.

Q And what part of March was it?

A I believe it was March 4th.

THE COURT: Next question.

Q Now, you say you had a conversation with him in the

law library?

A That is correct.

Q There were other people, I believe you said?

A Yes, there were other inmates and they were getting advice and there were a few officials in there from the prison. Sergeant Maginnis was one of them.

Q Will you give us the contents as nearly as you can remember of the second conversation? Will you tell us what he said to you and what you said to him, meaning Tony Verzino?

A I will try the best to my recollection.

Q Go right ahead.

A Well, we sat down, I had an office there, I had my own office, and I told him --

Q Keep your voice up.

A I told him he didn't stand a chance on the search warrant issue, in my opinion.

Q That was your opinion?

A My opinion.

Q Right.

A And he says, in -- in other words, it came out like this. In jail everybody talkes, it is like gossip, conversation. That is all you have got to do in jail, you see.

THE COURT: You are a lawyer, you know.

MR.AMOROSA: I object to that and move to strike it unless it was said.

A In jail you have conversations.

MR.AMOROSA: I object to this, unless it was said.

THE COURT: Yes. You are an intelligent fellow. What you are doing is bothering the Judge, which I know you don't want to do. You are supposed to stick to the point. I asked you for a conversation, and what do you do, you want us to know you have an office, and we are glad you have an office. You want us to know you are helping other people. We are glad, it is very nice, but we are not asking you about that. We are asking you what did this fellow say to you and what did you say to him and that is it. That means words. It has nothing at all to do with whether he sat, stood, how big your office was, what other people were there, what their names were. Just what was said; that is it?

Q Give us exactly what the Court just told you.

A Tony Vase asked me if I ever heard of Tony West or do I know Tony West. I says no.

Q Keep your voice up.

A I said no.

THE COURT: Will you leave him alone, please. I will take care of that.

MR. J. PANZER: All right.

THE COURT You rest. Take a seat. It will take more than a few moments. Go on.

A Then he said to me, "That son of a bitch, I am going to get him" -- referring to Tony West.

I didn't say anything, I just looked at him. If you are going to get him, get him.

MR. AMOROSA: I move to strike it if he didn't say it.

THE COURT: I'll let him go on.

A He said "By hook or crook. I already got him once; I am going to get him again."

I said, "What's the problem?"

I thought he was a nut at first.

MR. AMOROSA: I move to strike out he thought he was a nut.

THE COURT: It is part of the motivation for the conversation and I would say that that is admissible. Even the other item I think is a natural part of the conversation. Go ahead.

A Thank you, your Honor. So I says to him, I says, "What's the problem?"

He says "He's been" -- there is a woman here -- he says "He has been fucking my wife," you know. So I says -- I mean I didn't know what to say.

"That's a bad thing. If he is fucking your wife it's a bad thing that this Tony West is doing that. That is a bad thing."

He said, "I got him once and I am going to get him again. I am putting him in a junk case."

In jail language putting in a junk case means to frame a guy, fabricate evidence.

I said, "Wait a minute, are you serious?"

He says, "Yes."

I said, "Look, this guy West is wrong for doing what you are saying, if he did it, but you are double wrong to turn around and fabricate a story and put a guy in jail. The way to do it is get out on the street and hit him with a baseball bat, because two wrongs don't make a right."

I really didn't believe he was going to do this, I thought he was just steamed.

MR. AMOROSA: I object unless it was said.

THE COURT: Strike it. Now you are going into your speech. You are supposed to give us the conversation.

THE WITNESS: Okay, I am sorry.

THE COURT: You either do that or step off. Make up

your mind.

A So I says, "Two wrongs don't make a right. That ain't the right way."

He says, "I got him once and I am going to get him again. I am putting him in a junk cas[illegible]nd I will kill two birds with one stone I will get him in jail, and that is just the same as killing him, putting him in jail."

Q Now --

THE COURT: Wait a minute. Are you through?

THE WITNESS: To that question?

THE COURT: Are you through with your answer?

THE WITNESS: Yes.

THE COURT: Very well. Next question.

Q Now, I believe you testified that this occurred on or about the early part of March, I think you said March 4th, if I am correct.

A March 4th.

Q Is there any particular reason why you remember the date as being March 4th?

A Yes. I make an interview slip whenever I speak to somebody in the law library, and I seen him twice. The first time was in A block I didn't make the interview slip but there is an interview slip which states in Sing Sing Prison in the records that I was the legal counsellor on

March 4th speaking to Tony Verzino.

Q Now, Mr. Rosenberg, at that time going into that March 4th conversation, had you ever met me?

A No.

Q Had you ever met me in your life?

A I never even knew you. I heard your name but I never knew you.

MR. AMOROSA: I move to strike.

THE COURT: All right. The answer is yes or no.

A No.

Q Did you ever meet or know Tony DeLutro?

A No, sir.

Q Did there come a time that you were transferred from Sing Sing Prison to another prison, at Attica?

A Yes -- no, Clinton.

Q Where?

A I was transferred to Dannemora, Clinton.

Q Dannemora?

A Yes.

Q I believe you testified you stayed in Sing Sing Prison until March 19th?

A March 19th I was transferred from Sing Sing to Clinton Prison.

Q Did there later come a time in the summer of 1975

that you found yourself in the West Street Correctional Center where prisoners who have federal matters are incarcerated?

A Yes, I was there.

Q Was that on the west side, West 10th Street?

A I believe it is 11th Street. It is West Street Federal Prison.

Q West 11th Street is correct. Thank you.

Did there come a time that you called my office and requested that I come to visit you?

A Yes.

Q Did I so come to visit you?

A Yes.

Q Did you tell me at that time --

MR. AMOROSA: I object to it, your Honor. Leading.

THE COURT: Yes. Don't lead. And you better fix the date, Mr. Panzer.

Q During the month of June, the exact date I cannot recite, but during the month of June did I come to visit you in West Street Correctional Center?

A Yes, you did.

Q Did you have a conversation with me?

A Yes, I did.

Q Will you please relate to this Court and jury the conversation that you and I had concerning Verzino and DeLutro.

MR.AMOROSA: The conversation that he had with Mr. Panzer, if any, is hearsay. It is not -- this is no conversation with Verzino at this point. Obviously that conversation was totally admissible. Any conversation with Mr. Panzer is hearsay.

THE COURT: I am afraid that is so, Mr. Panzer, and I am going to sustain the objection.

Q As a result of the conversation that you had with me -- I will withdraw that.

After the conversation that you had with me when I went to see you in pursuance of your telephone call, did you inform me of certain facts?

A Yes, sir.

Q Yes or no?

A Yes, I did.

Q Were you then transferred from the West Street jail to your present address in Clinton Prison?

A Yes, I was transferred back.

Q And when were you transferred back from the West Street jail, if you remember, back to Clinton Prison?

A July 22nd.

Q Of what year?

A 1975.

Q And did I come up to see you in Clinton Prison?

A No, sir.

Q And is it a fact that you are here today testifying in pursuance of an order that I had signed by Judge Cooper to bring you down from Clinton Prison and testify here today?

A Yes, sir.

MR. AMOROSA: Objection. Irrelevant.

THE COURT: Well, that is all right. Anything else?

Q Did I have a conversation with you in the Metropolitan Correctional Cdnter in back of this very courthouse a week or two ago?

A Yes, for a very short limited time, right.

Q Did I have a conversation with you?

A Yes.

THE COURT: He didn't ask you how long. Did he have a conversation with you?

THE WITNESS: Yes, your Honor.

THE COURT: That's all.

Q And did you inform me again of certain facts?

A Yes, sir.

Q Now, can you tell us whether you — withdrawn.

How did you learn that I was the attorney for Mr. DeLutro?

A Through the prison grapevine.

Q Was there an article in the Times?

A Yes.

Q Wait a minute. Did you read an article in the Times concerning this arrest of Mr. DeLutro?

A Yes, I did.

Q Is everything you are telling us here today the truth?

MR.AMOROSA: The jury will decide that. I move to strike the question and the answer.

THE COURT: So ordered. The jury will disregard the question.

Next.

MR. J. PANZER: No further questions.

THE COURT: Before I forget it, ladies and gentlemen of the jury, Mr. Panzer's question about an article in the Times prompts me to ask you whether by accident or otherwise did any one of you notice any article which appeared in the newspapers of this morning relating to any person whose name was brought out in the course of this trial?

(No response.)

THE COURT: Did you happen to notice anything?

(No response.)

THE COURT: Did you happen to notice anything in today's papers that deals with drugs or narcotics? Did you happen to look at anything that dealt with that? Anyone?

(No response.)

THE COURT: That is whatyou wanted me to ask?

MR. J. PANZER: Yes, your Honor.

THE COURT: That is sufficient?

MR. J. PANZER: Thank you.

I have no further questions of this witness.

MR. AMOROSA: May I proceed, sir?

THE COURT: Yes.

MR. AMOROSA: Thank you.

CROSS EXAMINATION

BY MR. AMOROSA:

Q You know the difference between a truth and a lie, don't you?

MR. J. PANZER: Objection.

THE COURT: That is proper cross examination.

MR. J. PANZER: I will withdraw my objection.

A Do I know the difference between what?

Q You didn't hear that question?

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A No, I have bad hearing. My eardrum is broke. You have to be a little closer.

Q Do you want me to come a little closer?

A I would appreciate it.

Q I am afraid I can't.

I will try to keep my voice up. Can you hear me now?

A Now [illegible]r you.

Q You didn't hear my first question?

A Only part of it. Truth.

Q You didn't hear me though I raised my voice?

MR. J. PANZER: I object to the colloquy between attorney and witness.

THE COURT: Mr. Panzer, it so happens that he is well within the realm of cross examination. He has a right to show right now, not a half hour from now, but right now, if the witness is not truthful. Objection overruled.

Q You say you did not hear me when I asked the first question of you? You did not hear everything I said?

A I didn't say I didn't hear everything. I said I heard part of it.

Q Oh.

A Let us not play semantics. Let us get to the issue.

MR. AMOROSA: Move to strike.

THE COURT: No, I think the jury -- I wouldn't think you would want that stricken.

MR. AMOROSA: You are right, your Honor.

THE COURT: Whether you want it stricken or not, it stands.

Q So you missed part of my first question, is that correct?

A I didn't quite catch all of it, right. That is correct.

MR. J. PANZER: Just a minute. Your Honor, I object to it. It's been asked. The witness answered it. He said he only heard part of it. I object to that continuous barrage.

Q Do you know Frank Lucas?

THE COURT: Wait a minute. Don't you think the Court has to rule?

MR. AMOROSA: I am sorry, your Honor.

THE COURT: Mr. Panzer, the Court overrules your objection, and forbids you from getting up and objecting again with regard to that same item. That gives the witness an opportunity to reflect. That goes to all cross examination. You didn't do it for that, although I know attorneys who do resort to that. You didn't do it for

that,but you destroy when you happen to do it whatever advantage might come to the questioner. He is pinpointing something right now. Right now he should be allowed to go on and continue. That is the end of that. Please watch it. I know you don't intend to do it, or to upset the Judge, but please watch that. When the government goes after a certain point you get up and object, and you should, but when there is a ruling you just have to leave it alone.

Next question.

Q Do you know the difference between truth and lie?

A Definitely.

Q You do?

A Definitely.

Q Do you know Frank Lucas?

A I don't know him. I met him in the cith prison.

MR. HOFFMAN : I have to respectfully object to the question that called for that answer, your Honor. I respectfully request removal of a juror.

THE COURT: The objection is overruled. A test of the witness' credibility is at iss, and this is confined to just Mr DeLutro. Next question.

Q Would you please answer when I ask you a yes or no question, answer yes or no. Do you understand that?

A Of course.

Q You understand that?

A Of course.

Q How many times have you testified in the last year?

A Testified as a witness?

Q Yes.

A Once on my own case.

Q On your own case?

A Yes.

Q How about in the last five years?

A I was the attorney for inmates representing them for the last five years.

MR. AMOROSA: Would you strike the answer, if your Honor please?

THE COURT: No, I will leave it.

Q All right. Let me ask this question: How many times have you testified in the last five years?

A At my own trial once.

Q You have only testified --

THE COURT: For any purpose whatever, how many times did you get on the witness stand in the last five years, whether it was your case, someone else's case, whether it was in America or in New Zealand? How many times in the last five years did you testify as a witness, regardless of the subject matter?

THE WITNESS: Twice.

THE COURT: Thank you.

Q Once was in your own case?

A Both were in my own case.

Q You had two difference cases or -- is that correct?

A Two different cases, that is correct.

Q And when were those appearances, sir?

A One was in 1972, and one was just recently in this -- before Judge Judd in Federal Court in the Eastern District.

MR. J. PANZER: I didn't hear the last answer.

A Before Judg e Judd in the Eastern District.

Q You didn't have difficulty hearing Mr. Panzer?

A He speaks very loud.

Q I wasn't speaking loudly?

A Not in that first question you wasn't.

THE COURT: There you lost ground. Next question.

Q When was the first time again?

A 1972.

Q Where was that, sir?

A Before Judge Dooley on a federal civil rights trial in which I acted as an attorney in my own behalf.

MR. AMOROSA: Move to strike, your Honor.

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THE COURT: Why do you make speeches when the Judge keeps telling you thatyou mustn't do it. You are throwing something in and you are likely to throw something in that is going to upset this whole trial. Did you hear what I said?

THE WITNESS: No disrespect to your Honor, he asked me --

THE COURT: I don't care about disrespect, I don't want your respect,mister, I don't want anybody's respect as far as that goes, I am not looking for it. I want this trial to be conducted the way I regard it to be the law, do you understand that?

THE WITNESS: I understand.

THE COURT: When I tell you just answer the question I mean that. Why is it that I have had witnesses here before you who took the stand who didn't have your understandin or your intellect and yet they understood what the Judge wanted them to do. I don't want you to say anything. You are the kind of a witness that is very likely to cause a mistrail here because you want to do it your way, and the more you do it the more I am warned you better look out, Judge, this fellow is liable to say something, even though it is well meaning and you are going to upset the trial. Stick to the question.

Q When were you convicted for killing the two policemen?

A In May -- I mean February of 1963.

Q In what court?

A Supreme Court, Kings County.

Q You were committing an armed robbery, am I correct, while you killed the policemen?

A That is what they say. I wasn't committing anything.

Q You were innocent?

A That is correct. I surrendered voluntarily, right.

Q The question was, sir, you were innocent of that?

A That is correct.

Q You were unjustly convicted of that?

A That is correct.

Q Did you take the stand in that case, sir?

A No, I didn't.

Q I see. You neither killed the policemen nor was engaged in an armed robbery at the time they were killed, is that your testimony?

A That is my testimony?

Q Yes. Is that what you are saying now?

A Yes, I wasn't present at the scene. That is

correct.

Q Because you never, according to your testimony, committed an armed robbery?

A On this case that youare speaking about?

Q I said you have never according to your testimony committed an armed robbery?

A Yes, I have committed an armed robbery.

Q You have?

A Yes, I have.

Q When did you commit the armed robbery?

A In 1958.

Q Is that the only armed robbery you have ever committed?

A [illegible] is correct.

Q So you did not commit the armed robbery in which it was alleged and in which you were convicted which resulted in the deaths of two policemen?

A That is correct.

Q You wereframed in that case?

A Well, you could callit framed.

Q Were you framed, sir, yes or no?

A Well, I was innocent and they convicted me so that means I didn't do it.

Q Did people get on the witness stand lie against

you in that case?

A People were brutally beaten and got up there and lied against me.

MR. AMOROSA: Your Honor, I move to strike the answer.

THE COURT: No, I will let it stand.

Q People were brutally beaten and forced to testify against you?

A That is correct.

Q Were you present when these people were brutally beaten ?

A No, but the police conceded they beat them.

Q Oh, did the police concede that at your trial, sir?

A Yes, sir.

Q The police came in and testified at your trial in which you were convicted for murdering two policemen that they brutally beat the witnesses who testified against you, is that your testimony?

A That is my testimony. You heard it. That is precisely my testimony.

Q Thank you.

MR. J. PANZER: Your Honor, he shouted so into my ear I got scared.

THE COURT: Please remember that these are my officers of the court, and even though they are on the opposite side of you when you suddenly get excited and you offend Mr. Panzer's ear you are likely to subject yourself to a civil suit and I will be called as a witness and it is going to be terrible.

MR. AMOROSA: I apologize, Judge.

Q Would it be fair to say, sir, you are a very bitter man?

A No, not really.

Q Youwere unjustly convicted, the police brutally beat the witnesses and forced them to testify against you in your case, and you are not a bitter man. Is that correct?

A Yes. To be bitter would --

Q Yes orno?

A I amnot bitter. No, I am not bitter.

Q You are not bitter?

A No.

Q You are not bitter one bit, are you?

A I wouldn't use the word bitter.

Q You are happy with your situation?

A No, I am not happy. I have been fighting all these years. But I am not bitter.

Q I'm sorry, would you repeat that answer?

A I'm not bitter against the people that got beat. I am bitter against the police.

Q Against the police?

A Of course.

Q Who framed you?

A Of course.

THE COURT: All right. The Court says there's been enough along that line. Now you go to something else, please.

MR. AMOROSA: Yes, sir.

Q You said you spoke to Verzino in Sing Sing on March 4, 1974?

A Twice I spoke to Verzino, yes: March 4th, and it could have been the first and the second and the fourth.

Q Well, did you speak to Verzino on March 4, 1974?

A Yes. Yes.

Q As opposed to March 4, 1975?

A March 4, 1974.

Q Did you know Verzino prior to the time you spoke to him?

A No.

Q On March 4, 1974?

A I knew him from March 2nd or the day before, I spoke to him.

Q You met him two times in the beginning of March?

A That's correct.

Q 1974.

A Correct.

Q And with respect to the second time you know the exact date?

A Yes.

Q Is that correct?

A That's correct.

Q You said there are some papers reflecting an entry in which it is noted that Verzino met with you?

A That's correct.

Q Is that correct?

A That's correct.

Q What is your last name again?

A Rosenberg.

Q And there is an entry somewhere in Sing Sing indicating that Verzino meets with Rosenberg?

A Yes, there is a file with all interviews in which each legal counselor writes who had the interview with who and I had the interview with Verzino then and I signed it as the counselor, and he was the interviewer.

Q You made the entry?

A Yes, or course. I was the counselor.

Q And you made that entry, of course, on March 4, 1974?

A Yes.

Q And I suppose you have it with you, right?

A No, I am not in Sing Sing, I am in Dannamora.

Q You don't have it with you today?

A No.

Q But you have access to it?

A No, but you can get it. You can go to Sing Sing.

Q You can subpoena it?

A Subpoena it? That's your job, not mine.

Q And you have seen it already..

A I'm the one who wrote it.

Q I understand.

You have seen it?

A Of course.

Q When Verzino told you this -- tell us again what he told you on March 4, 1974, sir, would you?

A Well, he told me if I ever heard of a Tony West. And I said, "No."

He says, "I'm going to kill that son of a bitch," or words to that effect. I can't give you verbatim.

And I says, "What are you talking about?"

He says, "I got him once, and I'm going to get him again."

So I looked at him. I mean this was a shock to me. I was sitting there talking about legal stuff and he says, "He's been fucking my wife, and I'm going to get him." In effect, "I'm going to kill two birds with one stone. I'm going to go free and the state is going" -- "the government is going to kill him for me by me putting him in jail."

Q Did he say the government or the state?

A No, he said the government.

Q The government, the federal government?

A Government. He didn't specify federal or state. He said the government.

Q Didn't you just say he said the state, then you changed your mind and said, "No, he said the government"?

A I didn't think I said that.

Q You didn't?

A If I did, I stand corrected.

Q So he said what, the federal government or the state?

A He said, "The government will kill him for me. I'll kill two birds with one stone. I will be free and the government will kill him for me."

Q And there were people present when he said that?

A No, I was in my office with him.

Q You were by yourself?

A They were separate offices. Each legal counselor has their own clients or prisoners to discuss legal matters.

Q Didn't you tell him something like, "No, you can't frame this guy"? Didn't you tell him anything like that?

A I said, "It's wrong." I said, "If it's true, this guy West is bad, too, for doing that, to fool around with your wife," I said, "but don't" -- "two wrongs don't make a right, for you to go ou and put a guy in jail for no reason."

He looked at me and then he said, "I'll kill two birds with one stone."

I didn't take it seriously at the time. I didn't really believe it until I read a newspaper article in 1975 this appeared, and that's when I got in touch with Mr. Panzer when I came down to West Street.

Q I see. Let's take that one step further. When did you see the newspaper article? Please don't tell us either where you saw it and what it said. Just tell us when you

saw it.

A When did I read it?

Q Yes.

A I believe it was the beginning of February of '75.

Q And you saw it while you were in West Street?

A No, I saw it while I was in Dannamora.

Q Did you come down to New York specifically to report this news?

A No, I came down to represent somebody.

Q I see.

And while you were in town you got the idea in your head that you ought to report this news?

A I was already thinking of reporting this, but I didn't know who the attorney was and I think I was going down to court to represent another inmate and then off the grapevine I found out Mr. Panzer was representing Tony West.

Q Tell us again when you first learned that Mr. West was in trouble.

A From the newspaper I read.

Q I said tell us when.

A In February.

Q 1975.

A That's correct.

Q Tell us when you first contacted Mr. Panzer in connection with this matter.

A I believe it was in June.

Q You didn't run to the authorities?

A Excuse me?

Q Strike it.

Did you tell any law enforcement representative what Verzino had told you from February to June of 1975?

A Me tell a law enforcement officer?

Q I am asking you a question, sir. Can you understand the question?

A You're asking me if I told any kind of official, government?

Q Yes.

Can you hear me now?

A Yes, I hear you now, yes, definitely.

Q All right.

Did you tell any law enforcement representative from February of 1975 until June of 1975 what Verzino had told you?

A Of course not.

Q Of course not?

A Of course not.

Q Did you think they may frame you again for

something you didn't do?

MR. J. PANZER: Objection as to what he thought.

THE COURT: Objection sustained.

Q When did you begin the study of law?

A When I was in the death house.

Q When did you begin to study law?

A The exact date? Around February of 1963. Or March of 1963. I mean, officially studying it in law school. I didn't study it before that.

Q You are a pretty good jailhouse lawyer, aren't you?

A I hope so.

Q You have been doing it a long time, haven't you?

A I have been studying law approximately now about eleven years.

Q When was your death sentence commuted?

A In 1965.

Q Have you come up for parole since then?

A No.

Q When are you coming up for parole?

A In about another six years.

Q Would it be fair to say, sir, that you have

nothing to lose?

A That I have nothing to lose?

Q Yes.

Would that be fair to say?

A I don't understand the statement.

MR. AMOROSA: Withdrawn.

Q You say Verzino, the first time you saw him, was over in A Block, is that correct?

A That's correct.

Q And you were in a different block?

A I was in 7 Building and the law library, correct.

Q Why don't you give us a little background on the different buildings they have in Sing Sing so we can understand it better.

Verzino was over in A Block.

A All right.

A Block was changed over in Sing Sing State Prison strictly for city prisoners as detainees. Anyone who gets interested in New York City, Brooklyn, Bronx, wherever it may be, overcrowding, they would bring them to Sing Sing and hold them as detaining center to go back before conviction.

Where I was located, in 7 Building, was cadry,

which means I was assigned to Sing Sing Prison as a legal counsel to the inmates, locking in that building was my job. My office was in the law library.

Then you had what is known as Tappin, which is an honor unit downhill for work release and furloughs. The prison is one, but it is split in three parts.

When Verzino first came in he was in the A Block. In fact, he was in A Block until he left. And in A Block they have certain restrictions. They cannot leave that area. That's why I had to go there the first time. Certain inmates brought me the message that he wanted to see me.

Q Who were the inmates that brought you the message that Verzino wanted to see you?

A I don't recall. Some of the inmates said, "There's Tony Verzino. He wants you see you for legal help."

Q You went right up?

A Not right away. I went up four or five hours later. I am out until 11 o'clock at night.

Q This happened 11 at night?

A No. I went there about 8.

Q Are you paid by the various inmates?

A No. I have represented inmates and never took a dime in all my years.

Q You didn't charge Verzino any money, did you?

A Verzino?

Q Yes. For the advice you were giving him.

A No, I help inmates for nothing. That is the only life I've got, is to help inmates.

Q Tell us the conversation that you had with Verzino over in A Block.

A Strictly on the warrant issue. He had the papers there. He wanted me to look at the warrant, if it was valid, if it was legitimate, if it was good.

Q How long was the conversation?

A I stood with him about an hour and a half.

Q An hour and a half on the warrant?

A With him, in A Block.

Q And he had the warrant in his hand and he gave it to you?

A Yes, he had the warrant. This was in March.

Q Was that the same warrant, the exact same piece of paper?

A This is his.

Q That's his?

A Yes, I never gave it to him.

Q You mean his fingerprints may be on that?

A I don't know. I'm not a fingerprint expert.

Check it, you will find it.

Q You're a lawyer, aren't you?

A Yes.

Q Or you attempt to be a lawyer?

A No, I am a lawyer.

THE COURT: How do you figure that?

THE WITNESS: What?

THE COURT: That you're a lawyer.

THE WITNESS: Well, although I am not a member of the bar, your Honor, I have law degrees. Under the Supreme Court, Avery against Johnson, gave me a right to give legal advice and opinions to prisoners in prison. I have extended the doctrine to represent defendants in state and federal courts. The judges who are letting me in court as attorney of record are doing it as courtesy, it is not mandatory. It is mandatory I am allowed to give legal advice and opinions under the writs and briefs.

Under Avery and Wolf actually I am a lawyer, but not licensed in New York. I am sure your Honor is familiar with those cases.

THE COURT: Very well.

Q You are certainly well-versed in criminal procedure and criminal law, though, aren't you? Yes or no?

A I am well-versed in all law, sir.

Q All the law?

A Yes, I have a doctorate degree. I studied all law.

Q You know contracts and conveyances?

A Definitely. I studied all law.

Q You know international law?

A I know the laws of eminent domain. I have a law degree like you got. You know what you studied. I studied it.

Q Do you know international law?

A Of course.

I studied international law in the course.

Q Do you know it well?

A I know it. I studied it. I don't practice that field of law. I practice strictly criminal and Constitutional law.

Q So you know criminal procedure and law very well.

A Definitely.

Q And your family and you have had experience in the past while you were helping out other inmates with respect to fingerprint evidence?

A I studied forensic medicine, too, in law.

Q Weren't there fingerprints in your trial?

A Not on me.

Q There were no fingerprints?

A There was no fingerprints introduced against me, no.

Q Was there any fingerprints evidence in your case?

A Not against me.

Q Do you understand my question? Was there any fingerprint evidence in your case?

A Yes, against the co-defendant.

Q Now, tell us, who saw you together with Verzino? You mentioned a sergeant before, I believe?

A No, the sergeant brought a bunch of inmates from A Block to the law library. The usual practice at that time was --

Q No, the question is, who saw you together with Verzino?

A There was a lot of inmates there. I couldn't pinpoint which inmate saw me.

Q You can't --

THE COURT: Wait a minute. That is an answer. He says he cannot pinpoint it. That's the end of that.

THE WITNESS: You're correct, your Honor.

THE COURT: You have to remember what I said.

If you don't know, just add "I don't know, I don't remember." If that's the truth, that's all you have to do. Next question.

Q Do you know a person named Herbert Kaminsky?

A Yes, yeah, I know a Herbert Kaminsky.

Q How long have you known him?

A He was in Attica State Prison with me.

Q You had no trouble listening to my voice now?

A You're speaking very well now. I can hear you now.

Q He was in Attica with you?

A He was in Attica with me before the riot.

Q Was he up in Sing Sing with you?

A Yes, came down to Sing Sing while I was down there, that's correct.

Q And how long was he in Sing Sing with you?

A Not too long. It really wasn't that long. Maybe a couple of months.

Q Do you have any other convictions besides the murder conviction?

A One robbery conviction.

Q Another armed robbery conviction?

A One robbery conviction, that's correct.

Q Did you do one?

A Yes.

Q That's the one you did?

A The one in '58 I committed, yes.

Q And then you had the murder conviction?

A Yeah, and this case that I am doing time on now, that's correct.

Q Didn't you tell Verzino when he told you this information about West, this scheme to frame West back in March of 1975, didn't you tell him not to do it? In substance.

A Yeah, like I didn't believe him at first. I see a lot of weird things. I thought he was just mad, raving, because the guy was fooling around with his wife. You let off steam in jail. I never took --

Q Then you got to believe him in the conversation?

A I sort of believed him but I still wasn't sure. The only time I knew it --

Q And you had known him --

MR. J. PANZER: Your Honor, he doesn't let him finish.

THE COURT: Sustained.

A (Continuing) The only time I really knew it was when I read that article, which was about approximately almost a year later, I believe.

Q You became convinced at that time when you read the article --

A I wasn't convinced. I knew it because he told me before.

Q You were certain.

A Positive.

Q Was Verzino's name in the article?

A Yes.

Q Verzino's name was in the article, in the New York Times?

A Yes.

Q You're certain?

A Yes.

Q When again?

A What date?

Q Yes.When.

A I think it was January 30th. I got the article here.

Q You do?

A Yes.

Q Would you take it out?

A Of course.

Q What other paper did you bring along with you for your court appearance today?

A I brought anything I deemed was necessary.

Q All right.

MR. AMOROSA: Will you mark this for identification, please.

THE CLERK: What number do you want, Mr. Amorosa?

MR. AMOROSA: Government's Exhibit 120 marked for identification.

(Governments' Exhibit 120 was marked for identification.)

Q I show you 120 for identification and ask you whether you can identify it. Yes or no.

A Yes, I identify it.

Q Don't read anything in this article, will you, when I ask you questions.

A All right.

Q Is this article, is this the newspaper which contained the article?

A This ain't the article. This is the article, (indicating).

Q Yes, sir.

Does 120 contain an article which alerted you to the fact --

A That this occurred, yes.

Q That Verzino was serious about this business?

A That's correct.

Q This a[illegible]ted you?

A That's correct.

Q Prior to this time you really didn't think he was serious?

A Well, it was half and half. I hear a lot of stories in jail. It was half and half. I can't give you a direct answer on it.

Q You weren't certain?

A Right. It was half and half.

Q And what you see in this article with respect to Verzino, was that was Verzino told you he was going to do with West?

A He told me he is going to put him in a narcotics case. I don't believe, or I don't remember, if he said eleven pounds of heroin at that time.

Q No, don't read what's in the article, please.

He said he was going to put him in a narcotics case, is that correct?

A That's correct.

Q Did he say when he was going to do it?

A He said he already got him, and he is going to get him again.

Q He said he already got him --

A And he is going to get him again.

Q Well, did he say when he was going to put DeLutro in a narcotics case?

A He said to me, and I recall this precisely --

MR. J. PANZER: Your Honor, excuse me, excuse me.

At this time I would ask for a stipulation that the article that's been marked for identification only mentions Verzino. I would ask for a stipulation from the government.

MR. AMOROSA: I stipulate to that, your Honor.

THE COURT: Very well.

Q Now, did he tell you when he was going to do it?

A He told me the case was already in, but it wasn't down yet.

Q The case was already in, but it wasn't down yet?

A In other words, the case was hanging. It was in investigation, it was before the grand jury, whatever else may be.

Q Verzino told you in March of 1974 that the case was before the grand jury?

A No, no, no, I'm saying -- you're asking me my

interpretation. When he said the case wasn't down yet, it was hanging, it could have been that it could have been in grand jury, it could have been here, it could have been they were going to make an arrest. I don't know.

He didn't give me a map or a detail of it.

Q Did he tell you he was involved in narcotics?

A Of course. I looked at his search warrant. They grabbed all the stuff in his house.

Q He told you about that?

A I read it. He asked me if it was a legal search warrant.

Q Did he tell you who the real source was?

A What do you mean the real source?

Q Well, he told you he was going to frame West, right?

A He didn't use the word "frame." He said, "I am going to put him into a case."

Q Now you can remember the exact words?

A I definitely do remember that, because that's prison language for "frame."

Q That's prison language?

A That's correct.

Q Would you tell us the conversation now again on March 4, 1975 -- 1974, rather, and when you can, tell us the

exact words as you can recall them.

A I can't give you exact words, it is a long time ago. All I can give you is my recollection of it. I can't go verbatim what he said to me at that time exactly, word for word. It's impossible. The only thing I could say to you is that he told me he wants to kill this guy Tony West because he was fucking his wife. So I looked at him. I didn't know what to say. What am I going to say?

He says, "I got him once, I'm going to get him again." He said, "Only I am going to go free and he is going to go to prison, I'm putting him in a narcotics case. I'm killing two birds with one stone." He even called his wife -- wait a minute.

Q You remember some more?

MR. J. PANZER: Just a minute. You don't let him answer the question.

Q Go ahead. You remember some more? Let's have it. Let's have it all.

A I'm going to give it to you, all I know, and what I'm giving is the truth, too.

Q Okay, let's hear it.

A What was odd here, he says, "That pock-marked face bitch," and then he turned around like he loved her because he says , "I don't want nothing to happen to her."

I don't know, it was a mixed up thing at that time. So --

Q Can you recall anything else being said besides that, because that was more than you had recalled the first time, was it not?

A No, it's just that your asking questions are bringing to my thoughts things that really I didn't think were relevant at the time that you are asking now.

Q Didn't you go over these conversations prior to today?

A I wasn't a private investigator talking to this man.

Q I don't mean with Verzino. I mean, didn't you go over these conversations with Mr. Panzer?

A No, I spoke to Mr. Panzer twice and it wasn't more than five minutes each time.

In fact, I didn't even let him in the prison the other night to see me.

Q Where, over in West Street?

A Yes.

Q Over in the MCC?

A Yes.

Q You spoke to him on two occasions, no more than five minutes each?

A The first occasion was five minutes in the old West Street, the second was between five and ten minutes, and the third time I couldn't even see him.

Q Have you a daughter?

A Yes.

Q Has she just recently purchased a new car?

A Purchased a what?

Q A new car.

A No.

Q Not to your knowledge.

A Not to my knowledge.

Q What's her name?

A Ronnie --

THE COURT: I don't know if it is essential. I don't want --

MR. AMOROSA: Your Honor --

THE COURT: You heard me. There are certain things we have got to weigh, and I don't want people who are innocent and have nothing to do with all of this muck and filth and rot to be unnecessarily jeopardized.

Now, if it means that much to bring out the truth, I'll allow it, but I ask you weigh it with care.

MR. AMOROSA: Your Honor, I will defer on that, if I can.

THE COURT: All right.

MR. AMOROSA: With the Court's consent, to bring it up again at a future time.

THE COURT: All right.

Q Would you tell us why you were transferred to Clinton in March of 1974?

A Well, to my knowledge was I sued the prison doctor for another inmate who fell off a roof. And I won the case in federal court, as his lawyer.

Q They were getting even with you?

A I guess that's what you would call it. Clinton Siberia.

THE COURT: When you say you won the case, what was the judgment?

THE WITNESS: I represented the inmate and the judgment was an $8,000 award.

THE COURT: All right. Next question.

THE WITNESS: Before a jury.

Q From February, 1975 until June of 1975, where were you?

A February '75 to June? I was in Dannamora and I came down to the federal court, in the Southern District, in May.

Q In May?

A Yes, May of '75, 15th.

Q And you were in DAnnamora beginning at what time?

A What did you say, '75?

Q Yes, I'm talking about '75 now.

A Yes, from January 15th I left West Street from that federal case I won and went to Dannamora. I came back in May of '75 to represent another case for an inmate before Judge Judd, and that's when I got in touch with Mr. Panzer, in June.

MR. AMOROSA: Your Honor, may we take a ten-minute recess at this time?

THE COURT: You've got it.

Now, there is another matter I want to look into during the recess, and I will take it. I see lawyers are in the courtroom. Please stay and I will take care of it.

But would you please count on fifteen to twenty minutes.

mmbr 1 Rosenberg-cross

1:10 pm (Jury in box.)

MR. LANG: Your Honor, Mr. Hoffman, you know, is not here. You may recall that he had to go someplace else, to another part, and you said all right.

THE COURT: Thank you, Mr. Lang.

BY MR. AMOROSA:

Q Mr. Rosenberg, you testified previously that you only testifiedin court two times in your life? Is that correct?

A No, that was not my testimony. You said in the last five years. I said two times.

THE COURT: You are absolutely right. Next question.

Q Two times in the last five years?

A That is correct.

Q And one was your own case?

A Both in my own case.

Q Two different cases?

A Yes.

Q Have you been to the offices of Maurice Nadjari in the last several years?

A Yes, I was subpoenaed before him.

Q When was that, sir?

A In May.

Q Which year?

A Last year -- the year before, 1974.

Q 1974?

A Yes.

Q In May of 1974?

A Thatis correct.

Q After Verzino told you about Tony West? Is that correct?

A Yes. That was in March.

Q Did you go right to his offices?

A Yes, I was dragged there in handcuffs.

Q You were dragged forcibly there?

A Yes, forcibly.

Q You tried to resist?

A Well, I could not resist; I was in chains and handcuffs. I did not want to go.

Q What did they want you to talk about, sir?

A They wanted me to frame Judge Rinaldo.

Q What?

A They wanted me to frame a judge and I refused.

Q What did they tell you to do?

A I cannot speak at this time. I just sued Maurice Nadjari on that same issue and I don't feel it refers to this case.

THE COURT: He is making an appeal to the Court. The Court has to give him an answer.

Do you need to press this?

MR. AMOROSA: Certainly we do. He has no constitutional right to refuse these answers, assuming that the Court rules that the questions are relevant to the inquiry here.

THE COURT: I have no way of knowing that. That is the reason I turned to you and I say to you, "Do you need this?" If you need it, then I will take it.

MR.AMOROSA: We believe it goes to the credibility of a witness who already made a statement in the record that someone in Maurice Nadjari's office has attempted to get him to frame a judge.

THE COURT: Yes.

MR.AMOROSA: We believe that should be pursued in terms of this witness' credibility.

THE COURT: Come in, gentlemen.

(In the robing room.)

(Discussion off the record.)

MR. J. PANZER: Your Honor, at this time in behalf of the defendant DeLutro I move for a mistrial and the withdrawal of a juror on the grounds that Mr. Amorosa opened up the door and alerted the jury by asking

the question of the witness "Did you take the stand?" I don't think that that is a proper question on cross examination. I feel that in every way he prejudiced not only my defendant, but every other defendant in this case by questioning a man as to whether he took the stand. Taking the stand is not a prerequisite and no one should be allowed to ask the question whether a man took the stand or not. On that ground I make the motion for a mistrial, and I think I am joined in that by every lawyer in this case at the present time.

THE COURT: Is there anything else you want to say?

MR.J. PANZER: That is all.

THE COURT: Does any other lawyer wish to speak?

MR. BLOSSNER: I sent a note into you during the recess on this point. I join Mr. Panzer in the motion for a mistrial and the removal of a juror. Mr. Amorosa after we had informally told the Court and Mr. Amorosa that my client would not be taking the stand, and several others would not be taking the stand, did ask the present witness whether he took the stand in his own behalf at his own trial. I think the answer without a proper foundation and without a proper basis in Mr. Amorosa's examination reflected on a defendant's failure to take the stand in his own behalf,

on the question of a belief of the defendant's own case, and reflects on my client and all the other defendants here. That is what upset me and why I sent a note to you. It just struck me as being wrong.

THE COURT: Does anybody else want to say anything?

MR. CHANCE: I join in the motion on behalf of William Chapman.

THE COURT: Anybody else?

MR. EPSTEIN: Not if a motion made by one inures to all.

THE COURT: Yes.

MR. EPSTEIN: Very well.

THE COURT: Motion denied. Let us proceed.

(In open court; jury present.)

BY MR.AMOROSA:

Q Did you testify, sir, while you were incarcerated, you had some association with what you call the grapevine?

A Yes, the grapevine is --

Q Just a moment. Is that correct?

A Yes, that is correct.

Q By grapevine do you mean some sort of way that information is conveyed to you from outside the prison and inside the prison?

A Yes, you could put it that way in totality.

Q You get messages to somebody in another institution?

A Definitely.

Q You can get messages to somebody in the street?

A Definitely.

Q They can get messages to you from the street?

A Definitely.

MR. AMOROSA: No further questions.

THE COURT: Anything further of this witness by anybody?

You are excused.

MR. J. PANZER: I have redirect.

THE COURT: I asked if there was anything by anybody. I didn't hear anything. You now stand up. You are to ask the Court for permission, for that is a permissive thing; it is not a right.

MR. J. PANZER: I ask the Court for permission on redirect.

THE COURT: Very well.

REDIRECT EXAMINATION

BY MR. PANZER:

Q Mr. Rosenberg, you mention something on cross examination about the beating of witnesses who testified

against you or about the lawless acts of the police?

A Yes, sir.

Q By the way, did the murder case in which you were convicted go all the way up to the Court of Appeals of the State of New York?

A Yes, sir.

Q Were you indicted with a man by the name of Portelli?

A With Anthony Portelli and another man named Anthony DeLerna.

Q I ask you to look at Court of Appeals opinion --

MR. AMOROSA: Your Honor, we object to counsel's reference. I don't know what he is going to do with this. It certainly is not in evidence here.

THE COURT: Why don't you ask him the question? What is it you want to know?

MR. J. PANZER: I will ask Mr. Amorosa to stipulate to this, if I may.

THE COURT: You don't have to ask him to stipulate to anything if you have an official record. What is it you want? Do you want me to look at something that is an official record?

I will look at it.

MR. J. PANZER: It is an opinion of the Court of

Appeals of the State of New York.

THE COURT: Is there certain language there?

MR. J. PANZER: Certain language.

THE COURT: Hand it to the clerk and indicate the page and so forth. What page is it, sir?

MR. J. PANZER: Page 239, 15 New York Reports, Court of Appeals.

THE COURT: Show this to the government. I presume, Mr. Panzer, it is the last paragraph of the opinion and appears on page 239? Is that what you mean?

MR. J. PANZER: Yes.

THE COURT: Show it to Mr. Amorosa. He wants it read into the record.

What is the position of the government?

MR. AMOROSA: Judge, we object to this.

THE COURT: Objection sustained. That last paragraph would require an analysis of the entire case, every item of evidence considered by the high court, every legal argument advanced, every proposition of law mentioned therein. And to take the conclusion of the court and have that, because it seems to be favorable toa witness, read, is grossly unfair. The objection is sustained.

MR. J. PANZER: I respectfully except.

THE COURT: What else of this witness?

BY MR. J. PANZER:

Q Mr. Rosenberg, you expect to come up for parole in six years?

A Yes, approximately six years.

Q If you lied on the stand --

A No, sir.

MR. AMOROSA: Objection.

THE COURT: Hold it. Put your question.

Q If you lied on the stand, do you think that would work to your disadvantage in a parole hearing?

A It would work to my disadvantage.

THE COURT: Wait. Don't you know when a lawyer gets up to object to stop? It does not look good when you continue.

MR. AMOROSA: We object to the question. It calls for an opinion.

THE COURT: Objection sustained. The jury will disregard the question and disregard what the witness said.

MR.J. PANZER: Mr. Amorosa opened the door when he said, "I have nothing to lose."

THE COURT: Is there anything else?

MR. J. PANZER: No further questi ns.

THE COURT: Anything by anybody?

MR. AMOROSA: Just one question.

RECROSS EXAMINATION

BY MR. AMOROSA:

Q Your conviction was affirmed by the Court of Appeals, wasit not? Please answer yes or no.

A Yes.

MR. AMOROSA: No further questions.

THE COURT: That was elicited during the course of his examination.

Step down.

(Witness excused.)

* * * * *

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(Jury in box.)

THE COURT: Thankyou, ladies and gentlemen, for being on time. I appreciate that.

Proceed, Mr. Panzer.

MR. J. PANZER: Mr.DeLutro, take the stand, please.

A N T H O N Y D e L U T R O, a defendant, called as a witness on his own behalf, being first duly sworn, testified as follows:

THE COURT: Mr. DeLutro, you have been in court; you heard me say repeatedly to witnesses urging them raise their voice so the jury can hear everything they have to say and to remember to answer just the questions put to them, never volunteer anything. You heard me say that, many, many times. So you have the advantage over others, because you have heard it repeatedly.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. J. PANZER:

Q Mr. DeLutro, you have been convicted, have you not, of selling whiskey without a tax stamp, a $54 tax stamp in 1971 and received a sentence of two years?

A Yes, sir.

Q Now, Mr. DeLutro, I show you Defendant DeLutro's Exhibit C in evidence and ask you to look at that picture. Do you know that man?

A Yes, sir.

Q What name do you know him by?

A Tony Vase.

Q Do you know his real name?

A Now I do.

Q What is it?

A Anthony Verzino.

Q Mr. DeLutro, how long do you know Tony Vase?

A About 15 years.

Q By the way, you and I spoke about this case, isn't that true?

A Yes, sir.

Q Would you lie to save yourself?

A Yes, sir.

Q Would you lie under oath to save yourself?

A No, I would not take the stand if I had to lie.

Q You say you know this man 15 years?

A Yes, sir.

Q You said you would lie, but you would not lie to save yourself under oath. You would not take the stand?

MR. GOLDBERG: Your Honor, may we approach the bench?

THE COURT: Certainly.

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(Proceedings continued in open court with the jury present.)

THE COURT: Ladies and gentlemen, yesterday afternoon there was an occasion when I became a little upset at a gesture by Mr. Panzer, who is now conducting the examination of the instant witness. I want you to know I am overwhelmingly convinced that he did not mean any disrespect. I accept his apology. It was a sort of gesture that comes from living, and sometimes those gestures are misinterpreted, and when they are misinterpreted you sometimes have to pay a penalty. But I am convinced that that was not done on purpose and no disrespect was intended. That has all been washed out and forgotten, and so I hope you will remember that counsel stand in the court's high regard.

MR. J. PANZER: Thank you, your Honor.

BY MR. J. PANZER:

Q Mr. DeLutro, I believe you testified you know Tony Vase for about 15 years?

A That is right.

Q Please tell the court and jury where you met Mr. Anthony Verzino or Tony Vase?

A I can't recall exactly where I met him, but in a circle, in different restaurants, different bars that we frequented, that I used to go to drink in.

Q You heard Mr. Verzino's testimony that in 1961 and 1962 and 1963 and part of 1964 you engaged in narcotics transactions with him? You heard that testimony? Yes or no.

A I heard it and it is not true and he is a liar.

THE COURT: Wait a minute. Hold it. Listen to the question.

1-2 Q I ask you again, is this or was this testimony the truth?

A No, sir.

Q How long do you know Mr. Perna, if you know him?

A I met him twice.

Q Will you please tell us where you met him? The first time and then the second time?

A Once I met him in a bar on 30th Street and Second Avenue. The next time I met in Raymond's Restaurant.

Q You heard Mr. Verzino's testimony and you heard Mr. Perna's testimony that on a night early in November of 1973 you came into a bar on the corner of 30th Street and

Second Avenue. Did you so come into that bar?

A Yes, sir.

Q Will you please tell this court and jury the circumstances under which you came into that bar?

A You want me to start, in other words, how it all came about?

Q How it all came out.

A I came in Raymond's Restaurant. When I walked in there I saw Anthony Verzino talking to some fellow at the end of the bar, as soon as you come in the door, on the left. When I saw him I didn't go near him when I saw him talking with this fellow. I didn't know who the fellow was, who he was talking to. So I walked toward the middle of the bar and saw this girl Trish, or Trixie that I met a night before, a night or two before -- I don't remember exactly. I just says hello to her and I went to the back of the restaurant. I seen a few people there. I greeted them, I says hello to them. They offered me a drink. I didn't feel like drinking. I said I will be back later and have one with you, and I walked to the bar again to talk to this Trixie. In the interim this fellow this Tony Verzino was talking to had left.

Q Do you know the man that Tony Verzino was talking to?

A No.

Q Had you seen him before?

A Never.

Q At any time?

A Never.

Q Continue.

A When I went to the bar and stood with the girl, Tony Verzino sent a drink over. When he sent the drink I acknowledged the drink, wished him luck, and he called me over. When he called me over, he says, "Who is the chick?" I says some girl I just met a couple of days before that. "Well, who is she? Is she on the make or not?" I said, "To tell you the truth, Tony, I spoke to her a couple of days ago and she tells me she is a prostitute." He says, "Oh, yes? Why don't you bring her over. I got a couple of friends of mine on the corner of 30th Street." I says, "Bring them over here." He says, "I rather not. There are reasons why I don't want to bring them here." With that he says, "Call her over." I says, "Tony, leave her alone. She is not for you. Don't pay attention to her."

With that he says, "Come on, take a walk with me. I want to introduce you to some friends of mine. One guy thinks he knows you." I says, "Who is that?" He says, "Some fellow, Ernie, Ernie Pontiac." I said, "I heard the

name Pontiac, but I don't know the name Ernie."

When I went there he introduced me, he says, "Tony, this is Ernie; this is Mario. He was with me in Atlanta." I says, "Oh, yes? I heard his name mentioned from Atlanta." He had come home from Atlanta, Mario. After he introduced me, Tony turns around and tells him, he says, "Gentlemen, there is some broad in there, some nice looking girl," he says, "and she is a prostitute."

Q Did he use those words?

A Well, similar. I don't remember exactly, you know, just in that order, some girl or some broad or whatever. I don't know how he mentioned it. So Ernie says, "Well, why don't you bring her over here?" I says, "Wait, I will go back and ask her."

I go back and I tell her, I says, "Listen, there is a couple of friends of mine, there are three guys, they want to meet you; they are nice guys; I just met two of them, they seem like nice guys." With that she says, "All right."

So she comes with me and we go back to the bar. Now, I think, Tony Verzino came back with me. And I says, "This is Tony, and, you know, he has got a couple of friends with him over there. Do you want to go back to the bar?" So I went back with them and I introduced the girl to these

guys. With that I says, "Listen, I'm leaving." He says, "Listen, have a drink with us." I don't remember whether I had the drink or I didn't have the drink. I don't remember. I stood there maybe ten or fifteen minutes or five minutes or whatever. I don't remember exactly how long. I told Tony, I says, "Look, I am going to leave you now." He says, "All right, come back. I will walk you back."

I says, "No, you don't have to." He says, "No, come on, I will walk you." So I left the girl there and Tony and I started to walk back. When we started to walk back -- this place here is on 30th Street, on the southeast corner, the name starts with an M, I know, and Raymond's is on the southwest corner, like diagonally. So when we come out of the bar and I started walking on this side of the street, in other words, opposite the side where Raymond's is, we started walking, and along comes a car, beeps his horn a little bit. Tony turns around, I turned around, and I seen the guy that he was talking to at the bar before I left, when I first came in I saw this fellow there. With that Tony says, "All right, I will see you. You don't need me to walk." I says, "Of course not." I walked back to the bar, and I don't know what he did, I didn't turn back. I don't know what happened. And I went back to the bar and that was the end of it.

1-3

Q Now, Mr. DeLutro, can you fix the approximate time that this occurrence took place that night in early November?

A I can give you a span of maybe two hours. I don't know exactly.

Q Can you give us the approximate time? Nine, ten, eleven, twelve o'clock.

A I would say it would be maybe between 8:30 and 10:30.

Q You heard Mr. Perna testify that there was a conversation in the bar on 30th Street and Second Avenue concerning the sale of heroin? Is that true?

A That is a lie.

Q Mr. DuLutro, you heard Mr. Perna testify on direct examination that you told Mr. Verzino, "Give me the keys to your car and when you come to your car you will find the goods in your trunk?" Is that true?

A That is a lie.

MR. AMOROSA: I ask that that question and answer be stricken. I don't think it is the testimony in this case.

THE COURT: I will let the question and answer stand, but tell the jury the recital by an attorney as to what the evidence reveals is merely the lawyer's recollection

and does not necessarily mean that he is not mistaken, that they have to remember the evidence themselves, and so they are to disregard the question if it does not fit in with their recollection of the testimony. And I caution counsel to be careful about that, because it could lead to trouble. Just try to frame your questions in a general way in order to avoid the challenge that you are not reciting the testimony correctly.

MR. J. PANZER: I will, your Honor.

Q You heard Mr. Verzino testify that sometime in November of 1973 he pulled his car alongside of yours and you transferred five kilos of heroin to his car. Is that true?

A Is that true that I heard it?

THE COURT: Did you do that?

THE WITNESS: No, sir.

Q Mr. DeLutro, you heard Mr. Verzino testify that he gave you $236,000 as a first payment for five kilos of heroin which he had you deliver to him. Did you hear that?

A I heard it.

Q Is that true?

A No, sir.

Q You heard Mr. Verzino testify that he and Mr. Perna went through the kitchen of Raymond's on a night in

November and went through the door of the kitchen, and gave you, or Mr. Verzino said he gave you $16,000.

MR. AMOROSA: I object to that. Verzino's testimony was it was Verzino and Malizia.

THE COURT: You see, these little details are bothersome, because you may not recall correctly. Do you want to reframe your question in a more general way?

MR. J. PANZER: Yes.

Q You heard Mr. Verzino's testimony that he and another man went through the kitchen of Raymond's Restaurant and gave you $16,00., the purported balance of the payment of $250,000 on 29th Street and Second Aven . You heard that?

A I heard it.

Q Is that true?

A That is a lie.

Q Do you know a girl by the name of Susan Verzino?

A Yes, sir.

Q How long do you know this girl?

A About 15 years, between 13 and 15 years.

Q I believe you testified you have known Mr. Verzino about a similar amount of time, give or take a year or two?

A Right.

Q Did Susan Verzino have occasion to come into Raymond's Restaurant within the past year and a half or two? In this past year and a half or two did she come in alone?

A Yes.

Q Did she come in with Mr. Verzino?

A Well, --

THE COURT: Did she come in on occasion with Mr. Verzino?

A She has been in there with him, yes.

Q About how many times would you say?

A About two or three times she came with him.

Q Did she come in by herself?

A By herself. Once for sure. Twice maybe.

Q Did you have occasion at any time to talk with her?

A Yes.

Q Did there come a time in January of 1974 that you had occasion to go to Las Vegas?

A Yes.

Q Do you remember the approximate date in January that you went to Las Vegas?

A I believe it was January 24, 1974.

Q Do you remember what hotel you stayed at?

A At the Riveria.

Q Do you remember how long you stayed in Las Vegas?

A From Thursday to Sunday, the 27th. On the 27th I left.

Q Did you come back to New York on the 27th?

A Yes.

Q Was that on a Sunday night?

A Yes.

Q Did you look at the calendar of 1974 prior to your testimony in this case today?

A Did I look at the calendar? Yes.

Q Before you testified?

A Yes.

Q Did you determine that you came back on a Sunday?

A Yes.

Q Now, did there come a time in late January of 1974 that something happened in Raymond's between you and Tony Verzino? Yes or no?

A Yes.

Q Can you give the day of the week or the approximate time of the month?

A It was the following day after I came back from Las Vegas.

Q Will you please tell this court and jury what

happened?

A I came into the bar.

Q About what time?

A I don't know; maybe about 8:30, 9 o'clock. Then I came into the bar.

Q What happened?

A The usual thing. I just came in, I sat down, I was talking to Rossi, you know Russell Oddo. I was talking to him for a few minutes. Then I went to the back and saw a few people. Then I sat down. This fellow, Andy, was eating with his brother. I says hello to him.

Q When you say Andy, you mean the lawyer who testified here in this case?

A Yes.

Q Go ahead.

A I says hello to them. Then I got up again. He told me if I wanted to eat.

Q Who told you?

A Andy and Michael. I said no, I says, "I will have coffee with you later." So I don't know what I did; I don't know if I walked out or stood there or whatever but a little time elapsed, maybe a half hour or so, ten o'clock, 10:30. Andy was ready to have his coffee. He says, "Do you want to have coffee with us?" I says, "All

right." "Do you want to have a drink?" I says, "No, I will have a little anisette with the coffee."

So while waiting for the coffee to come out, I heard somebody saying, "Is Tony here?" The voice was familiar. So I started to turn, but before I could even make a complete turn, I heard Rossi hollering out, "Tony." I turn around and I see this Tony Verzino walk in. I says, "I will be right with you."

With that he walks, he comes right to the back. He says, "I want to talk to you." I says, "About what? Can't you wait a few minutes?" He says, "No, I want to talk to you." I says, "All right. Let's sit down." He was hesitant about sitting down, but, anyway, he sat down for a couple of minutes.

1-4 He says, "What is this I hear with you and my wife?" I says, "What are you talking about?" He says, "You heard what I said." I says, "Why are you blowing your top? What is wrong with you?" He says, "What is this I hear about you f'n around with my wife." I says, "Hey." He says, "Hey."

He gets up and he starts to walk away. I says, "come over here." With that he went like that (indicating) and he walked out. So I got disgusted, the hell with it.

Q You mean he raised at you?

A Yes, like to say he does not want to have anything to do with me, and walked out.

Q Did he say any words to you which you understood to be threats?

A Yes.

Q What did he say?

A He said, "We will see about that," words in that respect. You know, I can't remember exactly, but in that respect.

Q Did you see Mr. Verzino after that incident?

A No.

Q And when is the first time you saw Mr. Verzino after the incident that you just described in late January of 1974? When is the next time you saw him again?

A When I saw him here on the stand.

Q In court?

A Right.

THE WITNESS: Excuse me, can I have a little water, Judge?

THE COURT: Give the witness some water, Mr. Clerk. Thank you.

Q Now, Mr. DeLutro, are you employed at present?

A Yes.

Q Are you in business at present?

A Yes.

Q Will you please tell the court and jury where you are employed or in what business you are in?

A I own a cafe expresso store, I sell Capachino, expresso, Tortina, Gelata, soda, pastries, Italian pastries, and I also get a commission from a flower shop on Lexington Avenue where I average out like through the whole year something like $50 a week for the time being, but it can get better if I bring more customers in.

Q Now, Mr. DeLutro, are you connected with Raymond's Restaurant in any way?

A Yes.

Q Will you please tell the court and jury in what way you are connected with Raymond's Restaurant?

A Well, I am sort of manager, if you want to call it that way. I greet people coming in. I say hello to them. I make them feel I got a lot to do with the place so they keep coming back. I advertise the place more or less to help Raymond.

Q Did you invest any money in Raymond's Restaurant?

A No, sir.

Q Will you please tell us how you came to be connected with Raymond's Restaurant.

A Yes, the fellow by the name of Bobby Scavetta

that is, his sister owns a restaurant and bar on 38th Street and 7th Avenue. Raymond grew up with him. Raymond was his bartender before he bought his own place. Raymond was very, very, close to him. So he got this deal here about this Raymond's before it was Raymond's -- I don't know what name it was --

MR. AMOROSA: I am going to object to these conversations as being hearsay.

THE COURT: Yes, they are hearsay. Just bring it to a head by a few questions, Mr. Panzer.

Q Did Raymond Caramano, the owner of Raymond's Restaurant, ask you to become a manager?

MR. AMOROSA: Objection, Leading.

THE COURT: It is leading.

Did you have an arrangement with Raymond himself?

THE WITNESS: Yes, sir.

THE COURT: What was theesssence of thatarrangement?

THE WITNESS: In other words, if I can build up the business for him by advertising, friends of mine to come in and drink and have dinner there, advertise about food.

THE COURT: We understand that. Then wnat?

THE WITNESS: After he had gotten the place to

pay for the place and evened out, he would put me on the payroll there.

Q Did that time ever come?

A Not yet, no.

MR. J. PANZER: Will your Honor bear with me for a moment?

THE COURT: Yes.

Q Did Mario Perna ever come in Raymond's Restaurant?

A Yes.

Q After the meeting you testified you had with him in the bar on 30th Street?

A Yes.

Q And how many times did that happen?

A Once.

Q Did he come in with anybody?

A Yes.

Q Will you tell us please with whom he came in?

A Supposedly he says his wife. I don't know, though. He says his wife.

Q Can you fix the time approximately when that happened?

A It was sometime in December of 1973.

Q Did you speak with him on that occasion?

A No, I just says hello, he says hello, and I says

hello, and he wanted to buy me a drink, and I don't recall -- he introduced me to his wife -- I don't recall whether I had the drink with him or not.

Q Between the time you saw Mr. Perna and this man you say is Ernie Pontiac, I believe, and Verzino in the bar on 30th Street, which was sometime, you testified in November, did you see Mr. Perna between that time and the time you just testified to when he came into Raymond's with his wife?

A You mean the time from November, December, did I see him in between?

Q Yes.

A No.

Q Did you see Mr. Perna or his wife or both together from December until the present time?

A No, sir.

Q And when is the next time after December that he came in with a woman who he said was his wife that you saw Mr. Perna?

A In court over here when we started the case.

MR. J. PANZER: No further questions.

CROSS-EXAMINATION

BY MR. AMOROSA:

Q Are you also known as Tony West?

A Yes, sir.

Q How would you prefer to be called today?

A How would I what?

MR. J. PANZER: Your Honor, I object to that, how would he prefer to be called?

THE COURT: Objection overruled.

Q Mr. DeLutro or Mr. West?

A You can call me anything you want, sir.

Q Where do you reside, sir?

A At the present time 61-55 98th Street, Rego Park.

Q New York or New Jersey?

A In Queens, Rego Park.

Q How long have you resided there?

A I have been there since 1972, about the middle of 1972.

Q Do you own the place where you reside?

A No, it is an apartment house.

Q How much rent do you pay on it?

A I think it is -- wait, I am not too sure -- I know it is three and change -- I think it is $329. Don't hold me.

Q Approximately $329 per month?

A Right.

Q Since sometime in 1972?

A Around May or June of '72.

Q And from May or June of '72 until the present time have you resided at any other place besides that place?

A Have I resided any other place? Well, my son has got an apartment.

Q The question is, sir, have you resided at any other place besides that place since May or June of 1972?

A No.

Q You have not resided in New Jersey since May or June of 1972?

A No.

1-5 Q You have not resided since May or June of 1972 at 166 Mulberry Street in New York?

A That is my apartment, I told you that, my son lives there, I lived there for 25 years.

Q Where do you reside now, sir?

A In Queens.

Q Did you also reside from 1972 until the present time at 166 Mulberry Street in New York?

A My clothes have been there for until -- they are still there.

Q Who pays the rent there?

A My son.

Q You don't pay the rent there?

A No.

Q You don't reside there?

A I told you I have my clothes there; I had my clothes there.

Q Did you own an automobile in 1974?

A 1974? I own one now, yes.

Q Did you own one in 1974?

A The middle of '74 I believe I bought it.

Q What kind of car is it?

A A '73 Cadillac.

Q Did you register that car?

A Yes.

Q Did you tell the truth to the registration people?

A No.

Q You lied to the registration people?

A Yes.

Q You lied outright to the registration people?

A What do you mean outright? It is the only way I can buy it.

Q To lie to people?

A Not the people, on the application.

Q You wanted to lie on the application?

A Yes.

Q Because that is the only way you could have bought the car?

A Yes.

Q You lied about your address?

A What address?

Q About where you resided?

A Right.

Q And there was a reason for that lie?

A Yes.

Q There was a good reason for that lie, wasn't there?

A Yes.

Q Your interests were at stake?

A My who?

Q Your interests?

A What interests?

MR. AMUROSA: Withdrawn.

THE WITNESS: I don't know what you're talking about.

Q Was that the only time in 1974, sir, that you lied?

A No.

Q You lied continually in 1974? Is that correct?

A I don't know what you mean by continually.

Q You lied constantly? You lied day in and day out?

A No, sir.

Q You didn't lie day in and day out?

A No, sir.

Q You lied to the registration people on the application?

A Yes.

Q How about when you got your license and renewed your license, did you tell the truth about your address then?

A Well, I says I was living in Mulberry Street for 25 years, so I gave that address.

Q But you told us you resided in Queens?

A Well, I slept there.

Q Was it a slip?

A I slept there. I was living common law. If you want to get it out, fine, I have been there.

MR. AMOROSA: I move to strike it as not responsive.

THE COURT: No, let it stand.

Q You did not own any home in 1974?

A No, sir.

Q Is that correct?

A Correct.

Q You were paying rent on your place in the Queens apartment?

A No, I did not always pay it there, no.

Q Isn't that true?

A I did not always pay it there when I paid it.

Q Oh, you were short on cash in 1974? Is that correct?

A I don't know. I don't think I was short. If I didn't have it, I didn't pay it.

Q How much money did you earn in 1974, Mr. West?

A About $30,000.

Q Did you report that to the income tax people?

A Yes.

Q You did not lie then?

A No.

Q You told the truth then?

A Of course.

Q $30,000 you earned in 1974?

A Yes.

Q How much money did you earn, Mr. West, in 1973?

A I don't recall.

Q Was it $100,000? Was it $5,000?

A Oh, no.

Q No chance of it being $100,000?

A Never.

Q No way?

A Never.

Q How much was it?

A About 10, 11 thousand.

Q 10, 11 thousand?

A I'm not sure, though. It could be less; it could be more. Around that area.

MR. J. PANZER: Your Honor, may I respectfully request that Mr. Amorosa give the witness a chance to answer the questions as he puts them?

12 am

THE COURT: When I find the offense, I will speak up. Rapid cross is very important to bring out the truth, and it is an art that has long been perfected, and when used properly it is a good weapon.

Objection overruled. Give him a chance, so that the jury can understand what he is saying. Don't go too fast.

Next question.

Q Let us have it. How much in 1973?

A I don't recall.

Q Was it around $10,000?

MR. J. PANZER: Your Honor --

A I don't recall.

MR. J. PANZER: He testified he doesn't recall.

THE COURT: Objection overruled, and please, Mr. Panzer, unless there is a good reason you are not to interrupt, please, the flow of questions and answers on a given matter that you know has relevance. The fact is if the cross examiner repeats the question that is allowed. It is long recognized. It is when he abuses it that the Judge on his own can stop him. Now, you go ahead.

MR. JOSEPH: Thank you, your Honor.

Q It wasn't around $10,000?

A I don't recall.

A Was it around $20,000?

A I really don't recall it.

Q Around $30,000?

A If you sent for my income tax maybe you would find out. I don't know. I don't recall.

Q You don't recall?

A I don't recall.

Q In 1973 whetheryou made around 10, around 20, around 30?

A I don't recall it.

Q How about in 19 --

A I know I didn't make 20 or 30. That is for sure.

Q You do recall that?

A That I do recall, definitely, yes.

Q That you recall?

A Yes.

Q You are certain it was less than 20?

A Definitely.

Q But you are not certain whether it was less than 10?

A That is right, correct.

Q You are certain, whatever you reported to the income tax people, was correct?

A Correct. Right.

Q You told the truth on your income tax return to the income tax people with respect to 1973?

A Definitely.

Q Where were you working in 1973?

A 1973 -- I had opened up the store then around -- wait a while . Let me get my years fixed. Where did I work in '73 you said, right?

Q Yes, sir.

A In an antique store. Antique and jewelry.

Q Where was that?

A In the same place I got my store now.

Q Where is that?

A Mulberry Street. 148 Mulberry Street.

Q In what capacity were you employed there in 1973?

A Salesman.

Q Who was the other?

A It was a corporation.

Q What was the name of the corporation?

A Beautiful Things, Incorporated.

Q Who was the majority stockholder?

A I don't remember that.

Q You don't recall that?

A I don't.

Q Who was your boss?

A I'll be honest with you, I even tried to ask the lawyer that got the corporation going, he can't even find it, because I knew I would be asked that question and I wanted to give you the right answer, and I can't answer it.

Q You went out and asked your attorney, is that right?

A My attorney don't know nothing about it.

Q You went out prior to your testimony here today because you wanted to be truthful?

A Right, of course.

Q You wanted to have as much knowledge as possible about these things?

A Well, of course.

Q Of course.

A I don't want to answer it falsely.

Q I understand it.

A Right.

Q You went out and spoke to an attorney and tried to find out --

A Not an attorney. The attorney that made the corporation.

Q I understand. What was his name?

A Max Kreingold, 253 Broadway.

A And he is your attorney?

A He was the attorney for the corporation, not mine.

Q You went out and you spoke to him?

A I just told him. I says, Mr. --

Q You spoke to him, yes or or no?

A Yes.

Q The reason why you wanted to speak to him, and the reason why you spoke to him, and correct me if I am wrong, is because you wanted to make sure that when you were questioned here today you would have such knowledge as possible so you could respond truthfully?

A So I could be able to answer you if --

Q Answer yes or no, sir, please.

A Yes.

Q Why didn't you look at your income tax return for 1973?

A I can't find it.

Q Aha! Misplaced?

A I will find it if I need it, don't worry. Right now I can't find it.

Q Did you look for it?

A Yes.

Q You looked?

A Not too hard.

Q Do you know Armand Casoria?

A Who?

Q Armand Casoria.

A Armand Castora?

Q Armand Casoria. I will spell it for you. C-a-s-o-r-i-a.

A I don't recall the name at all.

Q Have you ever met a man that you knew as Armand Casoria?

A I don't recall the name.

Q Have you ever telephoned a man that youknew as Armand Casoria?

A I don't recall the name.

Q Have you ever called anyone from Raymond's Restaurant who resides at 2416 Rosetta Street in Fort Lee, New Jersey?

A What is it?

Q 2416 Rosetta Street in Fort Lee, New Jersey?

A Not to my knowledge.

Q You have no recollection?

A None at all.

Q You have no recollection of calling a man named

Armand Casoria?

A None at all.

Q You don't know Armand Casoria, is that correct?

A I don't think so. I don't know the name. Evidently, I don't know the fellow.

Q Let me direct your attention to December 24, 1974, sir.

A Yes, sir.

Q The early morning hours of that day. Did you meet with Armand Casoria in the early morning hours of that day in Raymond's Restaurant?

A I don't know Armand Casoria, I said. Do you want to show me a picture of him? Maybe I don't know him by name.

MR. ANDROSA: Move to strike.

THE COURT: Denied.

Q So your answer is you don't know because you don't know anybody by the name of Armand Casoria, is that correct?

A I don't know the name.

Q So you can't answer yes or no because you don't know the name?

A Of course not. Right.

Q Do you know a person by the name of Herbert

Kaminsky?

A Yes.

Q You know Herbert Kaminsky?

A Of course.

Q You have met with Herbert Kaminsky?

A What do you mean by met?

Q You met with him, you talked to him?

A I didn't meet him and talk with him. I know him.

Q Have you ever met him?

A What do you mean by that? Did I ever make appointments with him?

Q Appointments with him, no.

A I asked him --

Q Did you ever speak to that man --

MR. J. PANZER: I am sorry, I must get up because he doesn't let the witness answer the question.

THE COURT: Give him an chance to answer, counselor.

MR. AMOROSA: I will withdraw the last question and ask this question --

THE COURT: Next question.

Q Did you speak with Herbert Kaminsky in your life?

A Yes.

Q When was the last time you spoke to that man?

A To tell the truth, I don't remember. I think I only saw him this past week. He was having dinner. He passed with his wife on Mulberry Street.

Q Where did you speak with him?

A I didn't speak to him. Hello, and that was it.

Q And that was the last time?

A That is all, yes.

Q Let me ask you: How many times, sir, in your life, roughly speaking, have you spoken with that man?

A I don't know. I mean in my life.

Q Over five times?

A Oh, yes.

Q Over ten times?

A Approximately, yea.

Q About ten times?

A Yea.

Q Could it be 20?

A Possibly.

Q Could it be 30?

A No.

Q All right. Between 20 and 30?

A Maybe between 20 and 22.

Q I see. Thank you. Have you ever spoken with him in Raymond's Restaurant?

A I think he has been there.

Q He has been there?

A I'm pretty sure.

Q And you have talked to him in Raymond's Restaurant?

A Hello.

Q Is that all?

A How are you?

Q Is that all?

A How are you doing?

Q Is that all?

A Do you want everything? The whole conversation, is that what you want?

Q How many times did you speak to him in Raymond's Restaurant?

A Maybe twice.

Q Just to say hello?

A No, he came in for dinner.

Q You never sat down with him alone in Raymond's Restaurant?

A Alone, no.

Q You never sat down with him in Raymond's Restaurant alone?

A I don't recall.

Q You may have?

A I may ha-e.

Q You have met him in 1975, haven't you?

A This year?

Q Yes.

A I may have, yes.

Q You met him in 1974, haven't you?

A I may have, yes.

Q You met him in 1973, haven't you?

A I'm not too sure about '73.

MR. J. PANZER: I didn't hear the last answer.

THE WITNESS: I am not sure about '73. It is possible. I don't know.

Q Who owns Raymond's Restaurant?

A Raymond.

Q Isn't it a fact, sir, that you own it?

A No, sir.

Q And that Raymond is a front for you? Isn't that a fact?

A No, sir.

Q What is Raymond's last name?

A Caramana or Caramina or -- something like that. I know it's a C. Something with names in it.

Q You don't know his last name positively?

A No.

Q He gives you the orders over there?

A He what?

Q When you are there he directs you to do certain things, doesn't he?

A No.

Q You are helping him, right?

A Yes, but he don't direct me. What am I, a child, he has to direct me? Are you kidding?

Q Do you want a job at Raymond's?

A I am helping him.

Q Do you want somemoney from that?

A If he makes it, why not?

Q And Raymond will give you the money?

A If he does, fine. If he don't, forget it.

Q This guy Raymond will give you the money, is that correct?

A Hopefully, yes.

Q You are hoping he will give you the money?

A What do you mean give me the money? Put me on the payroll, put me on he books? Hopefully, yes.

Q Because you have been putting in a lot of time?

A I don't mind that because I have got no where to go.

Q The question --

A I don't mind staying there.

Q My question to you is you have been putting a lot of time in Raymond's, is that right?

A Only because I want to.

MR. AMOROSA: Move to strike.

THE COURT: I don't knowwhy you move to strike when the answers can be construed and used by either side. I don't quite understand that. He can't answer yes or no to everything. When you get a witness to spill over you are supposed to be grateful for it, whether he spills over well or not. It gives the jury a chance to study the person. A method of expression may reveal that he may be telling the truth. The spillover may show that is not doing so. But to keep on saying "I move to strike", as though youare asking an accounting of a mathematical problem, is stretching it. Now, stop it. Go right ahead.

MR. AMOROSA: Yes, sir.

Q You are in Raymond's Restaurant frequently? Aren't you?

A Yes, sir.

Q You have been in Raymond's Restaurant frequently since itopened, haven't you?

A Not exactly when it opened, no, sir.

Q When did it open?

A I believe it was June or July of 1973. I am not quite sure, though.

Q When did you begin to go into Raymond's Restaurant regularly?

A After it was opened maybe about three or ourth months.

Q How big is Raymond's Restaurant?

A I don't know. I can't judge feet, but I can tell you approximately from which end to which end.

Q Is it as big as this very room we are in now, sir?

A No.

Q Is it half as large?

A Hafl? Oh, yes, half, definitely.

Q Better than half?

A If you go down the center here -- I would say from the wall to wall about toward the table when you first come in, and then towards the back it widen's out.

Q How many people can it serve at capacity?

A I think 45. I think.

A Seated?

A Yes. Seated. No, wait. the restaurant part.

Q Excluding the bar?

A Right.

Q The bar can have what, another 20, 30 people?

A If they want to stand up you can have more than that. 30 people, too.

Q It is a pretty popular place, isn't it?

A Yes.

Q Very popular in fact, isn't it?

A I don't know about very.

Q But it is pretty popular?

A The food is very good.

Q The fellow Raymond makes a lot of money there, doesn't he?

A No.

Q How much does he make?

A He is losing money now.

Q He is losing money?

A Yes.

Q How much money is he losing?

A I have no idea. I don't know exactly what he is losing because he is not making what he should. He is behind on a lot of bills he can't catch up with.

Q He confers with you, doesn't he?

A He confides with me.

Q You have a very good relationship with him?

A I am looking to help the guy.

Q You are looking to help him?

A Right.

Q When was the last time you spoke with this man Raymond?

A Last night.

Q Last evening?

A Yes.

Q He knows you are here in trouble, doesn't he?

A Of course.

Q You told him that, didn't you?

A Of course.

Q Did you ask him to come down and testify that he owns Raymond's?

MR.J.PANZER: Objection. I don't need him. I figure if you want him you call him.

Q And he said to you that he is losing money there?

A Yes.

Q And he has been losing money for a long time there since it opened?

A When I say losing, he can't meet his bills. He can't meet them. He owes everybody. He is just hanging on on a think thread now. He is even on COD for the last six or eight months.

Q Has he asked you for a loan?

A No. I couldn't give it to him any way.

Q You don't loan people money, do you?

A I couldn't give it to him.

* * * * *

specification of the assertion. I don't intend, of course, to have follow-up questions with respect to it at this time. I wish to save those when DeLutro is in front of the jury. That is, I will ask general questions, your Honor will make a ruling as to whether he can invoke with respect to these --

THE COURT: No, I'm afraid you are compounding too much, and you are asking me to foresee what is going to happen. I want to listen to what he has to say, and then I'll see whether I'll allow any follow-up at all. I think it ought to be done now, and the spontaneity of it can be recorded to the jury. I mean, there it is. This is the way he answered with regard to those questions.

I don't see how you lose anything. You can't have everything under the circumstances. Certain sacrifices are bound to ensue, but that's none of my making.

All right.

In other words, your rapid fire cross, and so forth, can still bring out whatever it wouldhave been brought out if you were before the jury.

Mr. DeLutro, take the stand.

A N T H O N Y D E L U T R O, resumed.

* * * * *

necessity of being resworn.

Do you understand that?

THE WITNESS: Yes.

CONTINUED CROSS EXAMINATION

BY MR. AMOROSA:

Q Mr. DeLutro, do you deny that you sold narcotics or purchased narcotics from anyone from January 1, 1973, until July 10, 1975?

A Yes, sir.

Q You deny that?

A Yes.

Q Do you deny also that you spoke to anyone in that period of time about your purchasing narcotics from him or his purchasing narcotics from you?

MR. J. PANZER: I object to that question. The defendant desires to invoke his Fifth Amendment privilege.

THE COURT: The objection is overruled. That comes within the area that the Court permitted, and you have noted your objection, and the witness is directed to answer.

Repeat the question, Mr. Court Reporter.

(Question read.)

THE COURT: What is your answer?

THE WITNESS: Did I deny it?

THE COURT: Yes.

THE WITNESS: Yes.

Q So you didn't speak to anyone --

THE COURT: No, please, I must ask you not to repeat the question. That is a habit of yours, and I want that, especially in this dangerous area, not done, where you know that the Judge -- whether you agree with me or not my sensitivity to this may be greater than yours as a result of my vast experience compared to yours. Do you understand that?

MR. AMOROSA: Yes, sir.

THE COURT: Watch it.

Q Do you know a person named Charlie Brody?

MR. J. PANZER: I object to that question on the grounds of the defendant's Fifth Amendment privilege.

THE COURT: I will hear from the government. What gives you the right to ask that question?

MR. AMOROSA: Charlie Brody, your Honor, is the person with whom Mr. DeLutro was speaking in the early morning hours of December 24, 1974, said conversation being intercepted pursuant to court order and recorded. This is the conversation we would like to inquire about in cross examination of Mr.DeLutro as it is our position that he and Mr. Brody in that conversation were talking about narcotics and were talking about money with respect to narcotics.

THE COURT: Then you will have to enlarge on it, because, don't you see, he could have had dealings with Brody

on matters are are legal and outside the scope of this indictment.

Therefore, you have to be specific: "Did you nave a conversation with a man named Brody?"

Identify him clearly so there will be no question and "Did you talk with him about narcotics ever in your life?"

You don't have to give him a date. If he says "No," that's the end of that. If you have to use a specific date, use it.

Q On or about December 24, 1974, did you speak to Charlie Brody with respect to narcotics?

A With respect to narcotics, no.

Q Do you recall a conversation you had with Charlie Brody on December 24, 1974 while you were at Raymond's?

A Yes.

MR. J. PANZER: I object to that.

THE COURT: Wait a minute. Wait until your lawyer gets up.

MR. J. PANZER: I object to that on the same ground, the defendant's Fifth Amendment privilege.

THE COURT: Will you read that question, Mr. Deutsch?

(Question read.)

THE COURT: There was an answer. That's that.

Q Was that conversation generally in English?

A I don't recall.

THE COURT: Next question.

Q Let me show you Government's Exhibit 74 for identification and ask you if this is a transcript of the conversation you had with Charlie Brody in the early morning hours of --

MR. J. PANZER: Objection.

THE COURT: Let him finish.

Q -- early morning hours of December 24, 1974, while you were at Raymond's?

MR. J. PANZER: I will object to that question on the grounds that the defendant asserts his Fifth Amendment privilege.

THE COURT: What do you say to that?

MR. AMOROSA: Judge, this again is the inquiry we are going into now with respect to the conversation.

THE COURT: Precisely.

MR. AMOROSA: We want to elicit from this defendant some information with respect to this conversation. It is our position it relates to narcotics and it relates to money.

THE COURT: Did you have such a conversation as

Just look at it.

Objection overruled to that extent. Just yes or no. Did you have such a conversation?

THE WITNESS: What does "UNK" mean and "T"?

Q Go under the guidelines "T" is you, and "UNK" is unknown, and "C" indicates Charle Brody.

THE COURT: See if that reflects you had such a conversation. Yes or no.

(Pause.)

MR. J. PANZER: I hate to interrupt again, but --

THE COURT: Wait a minute. While the witness is looking at it --

THE WITNESS: It won't distract me, Judge.

THE COURT: All right, go ahead.

MR. J. PANZER: Is the question does it refresh your recollection?

THE COURT: The question is "Did you have such a conversation," and I say he has a right to ask that question. If you want to assert the privilege, go ahead and assert it.

MR. J. PANZER: I assert the privilege, your Honor.

THE COURT: All right. The assertion --

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MR. J. PANZER: On the grounds heretofore stated.

THE COURT: The assertion of the privilege is recognized depending on, first, the question whether or not this refreshes -- I am going to put in myself.

Does that refresh your recollection, yes or no, as to a conversation?

Do you still assert the privilege even though I merely call for the recollection, his recollection?

MR. J. PANZER: Yes, your Honor, I assert the privilege whether he remembers this conversation or not.

THE COURT: Objection overruled.

THE WITNESS: I don't understand this word here.

THE COURT: Read the whole business and see if it refreshes your recollection, yes or no.

THE WITNESS: I wanted to understand --

THE COURT: I understand there is a part there on the first page that you don't understand. You have already told me that.

THE WITNESS: There is another word I don't understand on the continued page.

THE COURT: ALl you have to do is go on and see whether or not that refreshes your recollection. Does it? Yes or no?

THE WITNESS: Part of it does, yes. You know, I don't remember every word in here.

THE COURT: But part of it does refresh your recollection?

THE WITNESS: Yes. That I spoke to him?

THE COURT: Yes.

THE WITNESS: Yeah.

THE COURT: Does that refresh your recollection that you spoke to him along those lines?

THE WITNESS: I didn't read it all yet.

THE COURT: Go ahead and read it.

(Pause.)

THE WITNESS: Your Honor, the conversation don't go like this. There is a lot of words here that -- the way the conversation went, it didn't go like this at all.

THE COURT: Next question.

Q Does that refresh your recollection as to the conversation?

A Part of it.

THE COURT: Mr. Amorosa, I ruled. He said it is so garnered, that's the essence of what he said, and that's the end of that.

Q Is it your testimony, sir, that 74 for identification does not refresh your recollection as to that?

A Very little and very jumbled up. I don't recall at all.

Q Do you recall whether you spoke in English or Italian?

MR. J. PANZER: I object to that.

THE COURT: Objection sustained.

Q Do you recall whether you or Charlie Brody mentioned the word --

MR. J. PANZER: Objection, there is no recollection he spoke to Charlie Brody.

THE COURT: Objection sustained. Objection sustained. And I don't care what the government's reaction is to the Judge by looking amazed.

Now, go on to the next question.

MR. AMOROSA: Yes, sir.

May I go on to the next question in connection with this conversation?

THE COURT: No, sir.

Q Do you know Ernest Malizia?

MR. J. PANZER: Objection, on the grounds the defendant desires to invoke his Fifth Amendment privilege.

THE COURT: What is the government's position?

MR. AMOROSA: The defendant testified that he was introduced to a person by the name of Ernest. The

indictment in this case charges this defendant with conspiring with Ernest Malizia. If that question is not relevant in connection with this, and if the defendant denied his participation in a conspiracy here, Malizia is a co-conspirator and a defendant, we submit the answer is totally relevant.

THE COURT: It is, and the Court does not recognize the assertion of the privilege.

MR. J. PANZER: Just because a man --

THE COURT: Are we going to have an argument every time?

MR. J. PANZER: Just one more time.

Just because a man is mentioned in an indictment presupposes the defendant knows the man. That's my argument.

THE COURT: Very well.

Answer the question, Mr. DeLutro.

THE WITNESS: I don't know his name.

Q You don't know the name Ernest Malizia?

MR. J. PANZER: He answered it, your Honor.

THE COURT: Please, sir.

What is your answer? You don't know the man?

THE WITNESS: No, I don't.

THE COURT: You don't know that name?

Colloquy Malizia-cross

THE WITNESS: Ernest Malizia, no.

Q You mentioned on direct examination Verzino introduced you to a person named Ernie. Do you recall that?

A Yes.

Q And he introduced you in a bar on the southeast corner of 30th Street and Second Avenue in New York, is that correct?

A Yes, sir.

Q Did you ever before in your life meet that person?

A No, sir.

Q Do you know Frank Pallatta?

A No, sir.

Q You never met Frank Pallatta before you saw him in this courtroom?

A Yes, sir.

Q Do you know Joseph --

THE COURT: What does "Yes, sir" mean?

THE WITNESS: I mean yes, sir, I never met him.

Q You never met him, therefore you never spoke to him prior to the time you saw him in this courtroom.

MR. J. PANZER: Objection. It wasn't brought out.

THE COURT: Objection overruled. If it comes

within the area of the indictment, if it comes within the area of the testimony elicited before he took the stand this morning, he shall inquire into it. That's the test.

All right.

Q Do you know Joseph Magnano?

A Do I know him?

Q Yes.

A I know him now.

Q You know him now?

A Yes.

Q Have you ever met with Joseph Magnano prior to the time you began the trial of this case?

A Did I ever meet him? I don't recall.

Q Did you ever speak with Joseph Magnano prior to the time that you saw him at the beginning of this case?

A Did I speak to him before the case started?

Q Did you ever speak to Joseph Magnano prior to the time that this case started?

A I don't recall.

THE COURT: What do you mean by "this case started"?

Q Prior to the time that the trial began in this case.

THE COURT: That's a different matter.

A Oh, yes.

Q You have?

A Yes.

Q How many times did you speak with Joseph Magnano prior to the trial in this case?

A Once.

Q And when was that, sir?

A When we were arrested, when we were being arranged in the court.

Q Was that the only time you spoke in your life with Joseph Magnano other than speaking with him during the course of this trial?

A Yes, sir.

MR. J. PANZER: The defendant said "arranged." The word is "arraigned."

MR. E. PANZER: I object, and move that the last question and answer be stricken because he said that he spoke to him when they were arrested, and I believe that is something the jury should not hear and should not be before the jury.

THE COURT: Objection overruled. The motion to strike is denied.

Q Do you know Anthony Soldano?

A I know him now.

A No, sir.

Q Did you ever meet with Anthony Soldano, prior to September 22, 1975?

A No, sir.

Q Do you know a person by the name of Joseph DiPalermo?

MR. J. PANZER: I will object to that because this is an invocation of the Fifth Amendment privilege. It has exactly what your Honor was trying to keep out, is the focus of this question, whether he spoke on the telephone with anybody, and whether he spoke with Charlie Brody or Joseph DiPalermo, who is one and the same person

THE COURT: Even though he talked on the telephone with regard to drugs you mean, he cannot go into that?

MR. J. PANZER: If he spoke with regard to drugs but again we are in a grey area.

THE COURT: You're saying it is asserted because it relates to other matters?

MR. J. PANZER: Yes.

THE COURT: What do you say?

MR. AMOROSA: Our position is we should be allowed to inquire into these matters to determine whether

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this individual is engaged in the narcotics business. The fact his attorney gets up and objects to every other question I ask, based on this man's Fifth Amendment rights, should not guide your Honor in this matter.

THE COURT: What makes you think it would guide me? That's a stupid thing to say.

MR. AMOROSA: I am not saying it.

THE COURT: You're saying it. You're saying because it is asserted I am going to give a ruling because it is asserted frequently. Why don't you watch your questions so you can conform with what the Judge told you to do.

MR. AMOROSA: I am not saying that.

THE COURT: You are always saying it. Every time you get set back you throw it on the Judge. You brought this on your head, and I have to restrict it as best as I know how, but there just a moment ago, you said "Your Honor is not going to make rulings because counsel gets up with great frequency and announces the privilege."

What makes you think that would guide me? How dare you say it? Correct yourself, Mister.

Q What is your function at Raymond's Restaurant?

MR. J. PANZER: Your Honor, I have to assert the defendant's Fifth Amendment privilege.

THE COURT: Read the question to me, Mr. Deutsch.

(Question read.)

THE COURT: What is your answer to that, Mr. Amorosa? Why do you say I shouldn't recognize the assertion of the privilege?

MR. AMOROSA: This was testified to on direct examination, I believe, and on cross examination, I believe, your Honor. It is an issue in this case whether this man owns Raymond's Restaurant and whether the owner on the license, Raymond Caramano is just a front for this man.

MR. J. PANZER: Your Honor, that may very well incriminate him into another area with the State Liquor Authority or two or three other areas which may be very incriminating and therefore the defendant again asserts his Fifth Amendment privilege.

THE COURT: What do you say to that?

MR. AMOROSA: As indicated, it is our position he has waived his Fifth Amendment rights with respect to this subject matter. He testified he wasn't employed at Raymond's, he was there often in this period of time.

Now, if he was there often in this period of time, we would like to know what he was doing there. It is our position he owns Raymond's, Caramano is a front for him, he purchased Raymond's with money that he received in furtherance of narcotics transactions. He has testified to this,

and our position is simply he has waived his privilege with respect to this area by taking the witness stand in this case on direct examination and on cross examination and testifying with respect to this subject matter.

THE COURT: Yes, but suppose his answer might incriminate him because it involves other crimes if he were to answer that particular question. Then what's your answer? You just don't like the Judge's ruling.

MR. AMOROSA: Judge, if that was his position he should not have taken the witness stand. How is the government going to cross examine and probe whether he told the truth on direct examination or cross examination unless we are permitted to ask him questions. It would foreclose the government's inquiry into whether he is telling the truth.

THE COURT: Pretty near. Pretty near. If it is likely to involve the commission by him of other crimes.

MR. AMOROSA: It is our position it relates to this particular crime, and it relates to this particular indictment.

THE COURT: At page 3238 on direct examination of this witness:

"Q Will you please tell the Court and jury where you are employed or in what business you are in?

"A I own a cafe espresso store, I sell capacino, espresso, tortina, gelata, soda, pastries, Italian pastries, and I also get a commission from a flower shop on Lexington Avenue where I average out like through the whole year something like $50 a week for the timebeing, but it can get better if I bring more customers in.

"Q Now, Mr. DeLutro, are you connected with Raymond's Restaurant in any way?

"A Yes.

"Q Will you please tell the Court and jury in what way you are connected with Raymond's Restaurant?

"A Well, I am sort of manager, if you want to call it that way. I greet people coming in. I say hello to them. I make them feel I got a lot to do with the place so they keep coming back. I advertise the place more or less to help Raymond.

"Q Did you invest any money in Raymond's Restaurant?

"A No, sir.

"Q Will you please tell us how you came to be connected with Raymond's Restaurant?

"A Yes, the fellow by the name of Bobby Scavetta -- that is, his sister owns a restaurant and bar on 38th Street and 7th Avenue. Raymond grew up with him. Raymond was his bartender before he bought his own place. Raymond was very,

very close to him. So he got this deal here about this Raymond's before it was Raymond's -- I don't know what name it was --"

The Court rules that that has already been opened up by the testimony already read, plus other testimony relating to this same matter, and, therefore, the Court does not recognize the privilege.

In that particular case only the witness is directed to answer the question.

Put the question again, if you can, Mr. Deutsch.

(Question read.)

A I'm like a manager there.

Q Are you paid?

A No.

Q Have you ever been paid by Raymond Caramano for any work you have done at Raymond's?

A No.

Q Have you ever asked him to be paid?

A No.

Q Are you there nightly?

A Yes.

Q Is Caramano there nightly?

A No.

Q Who are the bartenders?

A Night?

Q Day and night.

A Day, a fellow named Murphy in the daytime. He works five days a week, Monday to Friday. And Rossi and Raymond at night. They switch off. Sometimes they work together, and sometimes they work one day on and one off.

Q Caramano works as a bartender?

A Yeah.

Q And you have a managerial function, is that correct?

A Yes.

Q What's the phone number in Raymond's of the public phone on the wall?

A 679-9418.

Q Do you recall Rossi's testimony initially that the number was 964-1892?

A Yes.

Q Whose number is 964-1892, if you know?

A I have no idea.

Q How many other phones are there in Raymond's besides the wall phone with that number?

A One more.

Q Where is that phone located?

A Behind the bar. Behind the bar, but you can

reach over it from the end of the bar.

Q Does that have a different number or is it an extension of the 679-9418 number?

A No, that's a different number.

Q What is that number, sir?

A 889-- either 4945 or 4549.

Q Did you ever use that phone?

A Yes.

Q That's not Caramano's personal, private phone?

A No.

Q You use it frequently?

A No.

Q Does Caramano use it frequently?

A No.

Q Does Caramano have nights off?

A Yes.

Q When is that?

A He has four nights off.

Q He takes four nights off a week?

A Four nights.

Q What nights are they?

A Four or three, I don't know.

Q What nights?

A I think he's off Tuesday, Wednesday and

Thursday, and sometimes -- no, he works Tuesday, Wednesday and Thursday. Friday -- he works Tuesday, ~~Wednesday~~, Thursday and Friday, and sometimes he works Saturdays.

Q And when he works, he works as a bartender?

A Yes.

Q He tends bar?

A Yes.

Q How many employees in Raymond's?

A I don't know exactly.

Q Approximately.

THE COURT: Do you know that all relates to the present tense? That's how poor is the quality of your questioning, sir. It wouldn't mean a thing to us. It doesn't have any value whatever, except to test possibly his credibility. But you don't seem to be mindful of the fact that these numbers and this behavior pattern that you are trying to develop is of small interest to us if it relates to the present time.

Q Do you know how many employees there are currently in Raymond's?

A Exactly, no.

Q Do you know approximately?

A Maybe eight, ten.

Q Do you know how many employees there were in

Raymond's in November of 1973?

A I would say around the same.

Q Are they the same employees, give or take one or two?

A Yes.

Q You said on direct examination or cross examination last Friday, that Raymond confides in you or confers with you.

Do you recall that testimony?

A I don't recall it, but I would say yes to that.

Q He both confides and confers with you, is that correct?

THE COURT: He said yes.

THE WITNESS: Confers, no, I don't know.

THE COURT: Next question.

Q How much money did he pay for Raymond's?

A I have no idea.

Q He didn't tell you?

A No.

Q Who did he buy it from?

A I have no idea.

Q He didn't tell you that?

A No.

Q Who is on the license, do you know that?

A Raymond.

Q Who was his attorney?

MR. J. PANZER: Your Honor, I object to that.

THE COURT: It is a test of credibility. Objection overruled.

A Max Kreingold.

Q Did you ever employ Max Kreingold in your life?

MR. J. PANZER: I object. I don't see the materiality.

THE COURT: What do you say, Mr. Amorosa?

MR. AMOROSA: Mr. West brought up himself, Max Kreingold, I believe, last Friday on cross examination. He was the attorney who searched the court records and was unable to find who was the majority stockholder.

THE COURT: Objection overruled.

Q Did you ever employ Max Kreingold in your life?

A Yes.

Q Did you ever pay him money?

A No.

Q But he worked for you?

A What do you mean?

Q Did he ever do services for you?

A Yes.

Panzer - direct

Q Did you ever pay him money for doing those services?

A No.

THE COURT: Just a minute. You will wait until his question is finished. Do you get it? Do you get it?

THE WITNESS: Yes.

THE COURT: All right.

Q Now, who owns the cafe espresso shop, sir, at which you work?

A Me.

Q You own it?

A Yes.

Q Is it a corporation?

A I don't think so. I don't think I made a corporation -- I'm not sure if I did or not.

Q You're not certain whether you incorporated it?

A I'm not sure, no.

Q If you did incorporate it, are you the majority stockholder?

MR. J. PANZER: Your HOnor --

THE COURT: Objection sustained.

Q Now, with respect to the place from which you get $50 a week in commissions, will you tell us again what

that is called?

A To get customers for flowers.

Q What is the name of that shop?

A Charles Anthony Flower Shop.

Q And it is your testimony that you are not a stockholder in the corporation that owns that shop?

A No.

Q And you don't know who the majority --

THE COURT: Why don't you ask him generally, "Have you ever had a financial interest of any kind, directly or indirectly in that shop, yes or no?"

THE WITNESS: No,sir.

THE COURT: Next question.

Q Do you own any land interest or any other type of interests in Nevada?

A Did I what?

Q Do you own any today, land interest or any other type of interest, in Nevada?

A No, sir.

Q What property do you own, sir?

THE COURT: You mean real estate?

Q Either real or personal property in your own name.

THE COURT: What property, real or personal, do

you own?

THE WITNESS: None that I can think of. What do you mean personal? Like a car?

Q Yes. Do you own an automobile?

A A car, yes.

Q A 1973 Cadillac ?

A Yes.

Q When did you buy that?

A I think it was June of last year.

Q June of 1974?

A That's right.

Q Did you pay cash for the car?

A No.

Q Did you ever purchase a car for another person?

A Did I ever?

Q Yes.

A No.

Q Do you know a person by the name of Iris deJesus?

A Yes.

Q What kind of car does she own?

A She don't own any.

Q She owns none in her own name?

A No.

Q You never purchased a car for her?

A No.

Q Does she live with you?

A She's my wife.

Q She lives with you in Queens?

A Yes.

Q Did you ever tell the car registration board you live in New Jersey?

A Yes.

Q Did you ever tell the licensing authorities for automobiles in New York that you lived on Mulberry Street in New York?

MR. J. PANZER: Your Honor, I must assert his Fifth Amendment privilege at this time.

THE COURT: On what ground?

MR. J. PANZER: On the grounds it has nothing to do with the case. Your HOnor, at this time if he confesses to a crime he could be indicted for it.

THE COURT: That's a nice, enlightening statement. What do you think we have been doing all the time? I've been trying to uphold it wherever I feel that that is the case.

MR. J. PANZER: Well, I'm asserting it.

THE COURT: You're asserting it quite clearly

aimlessly. You are just shooting it out without having any [redacted].

Objection overruled. It is quite clear that you just decided that that might be something, but you're not at all convincing on that score at all.

Answer the question.

THE WITNESS: Can I hear it again?

THE COURT: Surely.

Mr. Deutsch, please.

(Question read.)

THE WITNESS: Did I ever tell them? Yes.

THE COURT: All right. Next question.

Q When did you tell them that, sir?

A After I -- I think this year. You mean with this car? Are you referring to this car?

Q I'm referring to your license, your license to drive an automobile.

A I always -- they always had my address.

Q As Mulberry Street in New York?

A Yes.

Q Yet you live in Queens, is that correct?

A Yes.

Well, I'm living there steady now.

Q Do you have an accountant?

A Do I have an accountant? Yes.

Q Do you pay your accountant?

A Yes.

Q Does he prepare your income tax returns for you?

A Yes.

Q Did he prepare your 1973 income tax return?

A Yes.

Q Did he prepare --

A My accountant now?

Q Yes.

A No.

Q Do you have another accountant who prepared your 1973 income tax return?

A I didn't have no accountant before '74.

Q Did you prepare your own 1973 income tax return?

A No.

Q Who prepared your 1973 income tax return?

A I don't recall his name, but he was somewhere on 44th Street and Lexington Avenue.

Q You supplied him with all the relevant information, didn't you?

A Of course, yes.

Q In 1974 you had an accountant?

A I didn't have an accountant until I realized that I needed one.

Q When did you first get your accountant?

A This year.

Q In 1975?

A Right.

Q So you didn't have an accountant who prepared your income tax return in 1974, is that so?

A I didn't have him then, no.

Q You prepared your own 1974 income tax return?

A No, sir.

Q Who prepared it?

A Harvey Gordon.

Q Who is Harvey Gordon?

A He's an accountant.

Q Did you hire him to prepare your 1974 income tax return?

A Yes, sir.

Q How much did you pay him?

A $100.

Q Do you have a bank account, sir?

A A bank account?

Q Yes.

A No.

Q You have no checking account in your own name?

A Yes.

Q You do. Where?

A Rego Park.

Q What is the name of the bank?

A It's either First National Bank or First National City Bank. I know it's in there somewhere.

Q Did you make out an application to get that bank account?

A I don't recall.

Q Do you have a savings account?

A Not that I know of.

Q You never had a savings --

A If I do, there is very little in there that I can remember. That's why I don't recall it. You know, if I got $20, I'm not lying.

Q Did you have a checking account in 1973?

A '73? No.

Q Did you have a checking account in 1974?

A Wait a while. '73, holdit. '73, yes. '73 I didn't have a checking account myself, but I was signing the checks that we were getting paid from the jewelry store, the antique store.

Q You were signing checks?

A Yes. I had the authority to sign checks, right

Q Who was on the account -- that is, who got the account? Was it a human being or a corporation?

A A corporation.

Q What was the name of the corporation?

A Beautiful Things, Inc.

Q You had the power to sign checks?

A Right.

Q Did anyone else have the power to sign checks besides you?

A I know I signed them all the time. I don't remember if there was anybody else that could have signed them. That I don't remember.

Q What was your position there at that shop in 1973?

A I was a salesman.

Q Were there any other salesmen?

A It could have been a buyer or a salesman. I don't know what category he went under.

Q Were there any other employees?

A That was getting paid?

Q Yes.

A Yes.

Q What was the largest amount of money in that checking account in 1973? To your knowledge, to your recollection.

A I don't follow that question.

Q How much money was in the checking account in 1973 in approximately November or December?

A How much money was in there at one time?

Q Yes.

A I don't recall.

Q Could it have been as much as $50,000?

A Never.

Q $10,000?

A Never.

Q $5,000?

A I'd like to say never there, too, but I'm not too sure.

Q We are talking about 1973 here?

A Yes, right. I'm not sure about that.

Q Do you have a safety deposit box in your own name?

A No

Q Did you have one in your own name in 1974?

A No, sir.

Q Have you ever had access to a safety deposit box?

A No, sir.

Q Never had access in '73?

A I never had access, I never owned one, I don't even know how to go about it.

Q Does Iris deJesus, your wife, have a safety deposit box?

A As long as I know her, she never had one.

Q Your testimony then is she doesn't have a safety deposit box now?

A Correct.

Q She didn't have one in '74?

A correct.

Q And she didn't have one in '73?

A Correct.

Q Did your daughter get married in 1974, sir?

A 1974 -- that was last year? Yes.

Q Where?

A Leonard's. Great Neck.

Q Is Leonard's a restaurant?

A Yes.

Q Was there a reception?

A No. The reception you want to know?

Q Yes, where was the reception first?

A On Mott Street. Mott and Prince. St. Patrick's Cathedral.

Q The reception was at St. Patrick's?

A No, the reception was at Leonard's.

Q Is that a restaurant?

A Yes.

Q Where is that again?

A Great Neck.

Q Great Neck, New York?

A No, Queens. Great Neck -- Queens.

Q Long Island?

A Long Island, right.

Q Were you there?

A Sure.

Q Did you pay the bill?

A No.

Q Who paid the bill?

A I have no idea.

Q How many people were there, sir?

A I have no idea.

Q No idea how many people were there?

A No.

Q Was it over 500?

A Yes.

Q You were there, right?

A Yes.

Q Was it over 600?

A I imagine so.

Q Was it over 700?

A I imagine so.

Q Over 800?

A Maybe.

Q Over 900?

A No, I don't think so.

Q About eight to nine hundred people?

A Yes.

Q You didn't pay the bill?

A No, sir.

Q You don't know who paid the bill?

A Right.

Q 1974.

A Not that I don't know. I'm sure that they paid it themselves or maybe his father might have paid some of it. I have no idea.

Q You never asked your daughter?

A No, I know that they arranged it themselves.

A Through the gifts they paid it.

Q Through the gifts they paid it?

A Right. Gifts that they received.

Q What did it come to, sir? What was the bill?

A I have no idea.

Q Was it over $50,000?

A I have no idea. No, sir, no where near it.

Q No where near $50,000?

A I don't think so.

Q Did you speak to your daughter with respect to it?

A No. I never questioned her about it.

Q Did you speak to her father-in-law with respect to it?

A I never questioned him either.

Q How about her husband?

A I never questioned none of them.

Q So you have no knowledge as to who paid, is that correct?

A Well, when you say "no knowledge," I'm assuming that they paid most of it, and maybe her father -- his father paid it, I don't know.

Q It is just an assumption on your part, is that correct?

A Right. I don't know.

Q You never spoke to anyone about it, is that correct?

A No.

MR. J. PANZER: Your Honor, I submit he should let the witness answer the question.

THE COURT: The screaming isn't particularly helpful. I think it defeats the whole purpose of our endeavors here. If you want to get something from the witness you will have to go about it in a recognized fashion. I have given you the opportunity to do it provided you are within your rights. The pending question is very simple:

Did you directly or indirectly contribute anything to the cost of that particular event, yes or no?

THE WITNESS: Anything, yes.

THE COURT: What did you contribute?

THE WITNESS: I paid for their flowers.

THE COURT: What else, if anything?

THE WITNESS: That's all I can remember.

THE COURT: Next question.

Q You never talked to anybody about who paid the bills, did you?

MR. J. PANZER: I object to the form of the question.

THE COURT: Objection overruled.

A I don't remember. I don't recall it.

Q Is it that you don't recall --

A I don't recall.

Q So you may have talked to somebody about the bill?

A I don't recall.

Q Would you say the bill was about $40,000?

A I wouldn't know.

Q Because you don't recall?

A Right.

No, I don't know at all. I know I never asked.

Q Well, do you know who manages Leonard's?

A No, I don't.

Q Do you know who owns Leonard's?

A No, I don't.

Q Had you ever been in your life to Leonard's prior to the time that your daughter had her reception there?

MR. J. PANZER: I object to that question as not within the purview of the direct examination.

THE COURT: Are you saying he cannot ask anything at all testing the truthfulness of this witness?

MR. J. PANZER: No.

THE COURT: Objection overruled.

What is the pending question, Mr. Deutsch?

(Question read.)

MR. J. PANZER: That's what I am objecting to, whether he was there.

THE COURT: I understand your objection. Objection overruled.

What is your answer?

THE WITNESS: Yes.

Q How many times have you been there?

A I don't recall.

Q Was it over five?

A No.

MR. J. PANZER: Your Honor, I object to the asking was it over five, under six. The man said he doesn't recall, and I think that is an answer.

THE COURT: He has a right to test out whether or not he is answring the way he does truthfully. That's an old right of a cross examiner.

Objection overruled.

What is your best recollection?

THE WITNESS: Maybe once or twice.

THE COURT: Next question.

Q Who did you go there with, sir?

A I don't remember.

Q Thank you.

How many times did you go to Las Vegas in 1973?

A '73, I don't think I went at all. I'm not sure. I could stand to be corrected. I don't know. If you show me I can tell you yes or no.

THE COURT: None of that.

THE WITNESS: I don't know, your Honor.

THE COURT: He asks you a question. Answer it. You don't have to add anything more than just answer the question.

What is the pending question? He doesn't have to show you anything. He has a right to ask you a simple question. What is the pending question, Mr. Deutsch, please?

(Question read.)

THE COURT: Next question.

Q But you may have gone once or twice?

A I doubt it.

Q You may have gone once?

A I doubt that, too.

Q Yes, sir. I am asking you for a yes or no answer. But you may have gone once?

A I don't recall.

MR. J. PANZER: Your Honor, that is calling for

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the witness' --

THE COURT: Therefore you object?

MR. J. PANZER: I object.

THE COURT: Objection sustained.

Q How many times did you go to Las Vegas in 1974?

A I think twice.

Q You went once in January of 1974?

A correct.

Q Who did you go there with, sir?

A Me, my wife, and a lot of other people. I don't recall exactly who, you know. I know first names.

Q You don't know any of the last names of any of the other people you went with?

A Yes.

Q Let's have them, sir.

A Michael Risoli, with his wife, Andy Risoli, with his wife, myself with my wife; the other people I can't remember their second names.

Q Is that the same Andy Risoli who testified here for you?

A That's right.

Q Was he the attorney?

A That's right.

Q Who paid, sir, for you and your wife to go to

Las Vegas?

A Myself.

Q In January of 1974?

A Myself.

Q Under what name did you fly to Las Vegas in January of 1974?

A If I am not correct -- I mean if I am correct, I think it was under my own name.

Q Anthony DeLutro?

A I think. In January of 1974, yes.

Q But it may have been a different name, is that correct?

A Oh, yes.

Q It could have been any one of several names, is that correct?

A I can tell you the name.

Q You can tell the names?

A Yes.

Q But it could have been any one of several names, is that correct?

A Only one other name.

Q What is the other name?

A Rossi. Anthony Rossi.

Q You would have traveled to Las Vegas under the

name of Anthony Rossi, is that correct?

A Right.

Q And you wouldhave traveled to Las Vegas under dhe name of Anthony DeLutro, is that correct?

A Yes.

Q But you can't recall which you used in January 1974?

A In January, 1974 I'm pretty sure it was DeLutro.

Q You're pretty sure but not certain?

A Right.

Q How about the other time you went to Las Vegas in 1974?

A Anthony Rossi.

Q There was a reason for that, wasn't there? There was a resaon why you used the name Anthony Rossi when you went to Vegas the other time in 1974, wasn't there?

A Yes.

Q And those are the two times you recall going to Vegas in 1974?

A Right.

Q There may have been another time though, right?

A Possibly.

Q How much did it cost to go to Vegas in January of 1974?

A The first trip?

Q Yes. In January of 1974.

A Maybe $500.

Q For you and your wife?

A Right.

Q That's the total expediture that you put out in January of 1974?

A Right.

Q Including the airplane trip?

A Right.

Q And including the stay at the Riviera? Is that correct?

A Right.

Q You didn't gamble while you were there, did you?

A Yes.

Q You gambled a little bit?

A Yes.

Q You made some money?

A Yes.

Q How much money did you make?

A I don't recall exactly. But I do remember -- well, I don't recall exactly at that time.

Q Would you say it was over $10,000?

A Yes.

Q Over $20,000?

A Maybe.

Q It could have been as much as $20,000 that you made then, right?

A Right.

Q And that was in January of 1974?

A It could have been then, yes. I may be confused with the month when I won it. I know I won money. I don't know if it was January or if it was another time, but it was in '74 that I won money.

Q Well, was it while you were in Las Vegas that you won the money?

A Right, in Vegas.

Q So it was either the January trip or the other trip?

A It was in '74, right.

Q Why don't you tell us when the other trip was to Vegas?

A When Sinatra was back there again in March.

Q You go to see Sinatra often in Vegas?

A Not often. It was the first two times I saw him.

Q It was the first two times in your life you saw

Sinatra in Vegas?

A Right.

Q How much did it cost you to go to Vegas in March?

A Hardly anything.

Q It didn't cost you any money at all to go there?

A No.

Q Did you pay?

A No.

Q You didn't pay at all?

A No.

Q You didn't pay the airplane people?

A No.

Q You didn't pay the hotel people?

A No.

Q Did you have friends in Vegas, sir?

A MGM picked up the tab. As long as they know you're going down there to gamble, they will pay your plane fare. You pay your plane fare and they reimburse you when you get there, and they pick up all the tabs in the hotel, outside of the phone calls.

Q What is the name of that flight to Vegas? Do you recall the name of that flight where MGM picks up everything

as long as you "gamble"?

Is that called a luxury --

A I don't know.

Q You can't recall?

A No, I don't know if they call that luxury. This is a private -- it is not a --

Q It is an exclusive affair, isn't it?

MR. J. PANZER: Just a minute. I must ask Mr. Amorosa to let the witness finish his answer.

THE COURT: Yes, Mr. Amorosa.

What were you saying, and what do you want to say?

THE WITNESS: There is people from all over going on the same plane. It is not a luxury liner. You call it a luxury liner. It is not a luxury liner. It is -- I don't know what it is. That's all I can rell you. I don't know.

Q How much money did you take when you went to Vegas in January of 1974 with which to gamble?

A How much money did I take?

Q Yes.

A Hardly any.

Q Hardly any?

A Right.

Q Did you gamble at that time?

A Yes.

Q How much money did you make?

A Well, I told you, there was times I won and lost there. There was twice I know I lost there in '74.

Q So you lost money in Las Vegas --

A Hold it.

Q All right, go ahead.

A There was twice I lost that I owed money there, but I didn't lose, I came back with money. In other words, it showed that I lost it, but I didn't lose it.

Q What showed that you lost the money?

A When I borrowed the money and I left a marker there.

Q How much money did you borrow, Mr. DeLutro, while you were there?

A I know once it was $10,500.

Q And this was in 1974?

A Right.

Q You testified you made $30,000 in 1974, didn't you?

A Correct.

Q What about the other time you borrowed?

A 10,000.

Q So you borrowed 10,000 on two occasions?

A Right.

Q Did you borrow the 10,000 on two occasions during the same trip?

A No.

Q It was two different trips?

A Right.

Q Did you make any other trips by plane in 1973 to any other place?

A I don't recall. No.

Q Did you go to Europe in 1973?

A No.

Q Did you go to Europe in 1974?

A I have never been to Europe in my life.

Q Did you go to Atlanta in 1973?

A Yes.

Q Did you fly to Atlanta?

A Yes.

Q Did you pay the bills?

A Yes.

Q Did you go down there in 1974 also?

A I make frequent trips there, now, you know. I don't know exactly the years. Sure, I went down there quite often, quite often.

Q Would it be fair to say, when you say "quite often," you go once a month to Atlanta?

A Not every month. There was months I missed.

Q Would it be fair to say in 1973 you went to Atlanta ten times?

A Maybe eight, seven.

Q To visit your brother?

A Right.

Q Who is incarcerated?

A Right.

Q When you went there you had to sign, is that correct?

A Of course.

Q And you went there in 1974, also?

A In '74, yes.

Q Your brother was released from custody when, in the middle of 1974, approximately?

A No, the middle of 1975.

MR. J. PANZER: Your Honor, at this time I must object to bringing his brother in. It may be prejudicial as to whether his brother is in jail or not, and I object to that line of question.

THE COURT: What do you say, Mr. Amorosa?

MR. AMOROSA: Your Honor, I believe he has

already testified on direct examination that when Rosino met him Rosino said, "This is Mario, he was in jail with your brother." Something in substance came out with respect to that. Even if that isn't in the record, I will move right away from this area.

THE COURT: I am going to direct that you cannot have that read to the jury.

MR. AMOROSA: Yes, sir.

THE COURT: Anything with visiting his brother in jail is out, and not to be read to the jury.

Next question.

Q And you paid for these flights down there in 1973, didn't you?

A To go to Atlanta, sure?

Q Did you go to Atlanta under your own name?

A Yes.

Q Anthony DeLutro?

A Yes.

Q And you made $10,000 in 1973, is that correct?

A Maybe.

Q Do you recall your testimony on Friday?

A I says I wasn't sure about my income tax. You asked about my income taxes?

Q Yes, sir.

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A I wasn't sure about the amount I made.

Q You're sure that whatever amount is on your income tax return, that was the amount that you made?

A Yes.

Q That was the amount you eanred in 1973?

A Right.

MR. J. PANZER: Your Honor, may I respectfully request, because I am going to ask it on redirect, he went to Atlanta, I would like to have the reason on the record why he went to Atlanta, because there may be an inference, Judge, that he went to visit Verzino or one of these fellows?

THE COURT: That's up to you, but you can't compel the asking of the witness if it is not asked. You may ask it.

MR. J. PANZER: I will ask him on redirect why he went to Atlanta.

THE COURT: Go ahead, Mr. Amorosa.

Q You testified on direct examination that you were convicted for a liquor violation and were sentenced to two years in prison, correct?

A Yes.

Q You were also convicted at the same time for conspiracy to commit the same offense, were you not?

A I believe so.

Q Where else in 1973 or 1974 did you fly to except Atlanta and Las Vegas?

A I don't recall.

Q Are you saying -- strike that.

Is it possible that you flew to other cities also in 1974?

A Yes. I think I went to L.A. in '74.

Q In 1974?

A I think so.

Q When in '74?

A I don't remember when, but I think it was a summer month.

Q It was in the summer?

A I'm not too sure when it was, what time of year. I know the weather down there was good.

Q Are you sure it was 1974?

A I wouldn't swear to it, no.

Q It could have been in 1973?

A I'm almost sure it was '74. I'm almost positive.

Q Is that the only one, the only other plane trip you can recall occurring in 1974 besides the ones you have already testified about?

A No, I think I went to Florida, also.

Q How many times did you go to Florida in 1974?

A I don't recall if it was '73 or '74.

Q Is it possible you went in '73 and '74?

A Yes, it is possible.

Q When did you go to Florida?

A I don't recall.

Q Was it in a winter month?

A I don't think so.

Q Did you go for a vacation?

A Yes. For a week. A week or six days, five days.

Q But maybe you went to Florida in '73 and '74 for a week's vacation?

A It is possible.

Q You paid for that of course, yourself?

A I was invited on one occasion.

Q You didn't pay anything on one occasion?

A When you say anything, I picked up a food bill maybe or a drink. You mean for the hotel?

Q I mean --

MR. J. PANZER: Again he is interrupting his answers. I would request he does not.

THE COURT: Please give him a chance to answer.

Q So on one occasion --

MR. J. PANZER: He didn't finish his answer.

THE COURT: Let's have it, Mr. Court Reporter.

(Question read.)

Go ahead, Mr. Amorosa.

Q Who was the person who picked up the bill?

A Michael Risoli.

Q Michael Risoli?

A I'm pretty sure he did. I'm not even going to swear to that. I'm almost sure, but not too sure.

Q Is he the brother of Andy Risoli?

A Right.

Q Who is the person who testified here on your direct case?

A Right.

THE COURT: Will you wait until he finishes?

THE WITNESS: I know what he's going to say.

THE COURT: You wait until he finishes. You say you know what he's going to say. How about the court reporter? He doesn't know, and I don't know.

THE WITNESS: Yes, sir.

Q Where did you stay in Florida at that time?

A At the Doral.

Q The Doral Country Club?

A No, the other one.

Q The hotel?

A Right, yes.

Q Was Sinatra there at that time?

A No.

Q Did you stay in a room?

A Yeah.

Q What interest does Michael Risoli have in the Doral Hotel?

A I think he said the people who owned the flower shop -- not the flower shop, but where he has the flower shop at the Belmont Plaza, they are the same ones who owned the Doral. In other words, he gave him a break, a good deal, by going to the Doral. They owned the property there.

Q Who owned the property?

A The people that owned the Belmont Plaza, the hotel.

Q Who else did you go to Florida with at that time when this fellow Michael Risoli picked up the tab for you?

A I think we brought the kids with us. He brought a couple of his kids and I brought my daughter.

Q Did you also bring your wife?

A Yes, she was with us.

Q And was the tab picked up for all three of you?

A I believe so.

Q Do you know what it came to?

A It wasn't much.

Q Over 1,000?

A I don't know.

Q It could have been?

A It could have been anything.

Q It could have been as much as 10,000, isn't that correct?

A No, I doubt it.

Q You doubt it, but maybe so, isn't that correct?

A No, it can't be.

Q No way?

A Impossible.

Q While you were down in Florida, did you go to Puerto Rico?

A No.

Q You didn't fly to the Bahamas?

A No.

Q To do a little gambling?

A No.

MR. J. PANZER: Your Honor, he answered, no, no, no.

Q What about the other occasion --

THE COURT: Doesn't that lend additional emphasis to it?. Do you want that stricken?

MR. J. PANZER: You're right, Judge.

THE COURT: When it is in your favor, I'm right. That's the test on the part of most lawyers. If the Judge rules in their favor he's a great judge and if he rules against them the judge should be removed.

Next question.

MR. J. PANZER: I didn't mean it that way.

Q Will you tell us when it was as best as you can recall the tab was picked up for you on this Florida trip?

A I would say in '73.

Q You would say in '73?

A I would, yes.

Q Did you go to Florida again in '74?

A I know I went once after that. I don't know if it was before or after.

Q Are you certain of this, that you went to Florida two times within the last two or three yeasr?

A Yes.

Q You're certain of that?

A Yes.

Q With respect to the second time did you pick up the tab yourself?

A My own tab?

Q Yes.

A Yes.

Q Who went with you the second time?

A A friend of mine.

Q Who was the friend?

A Some fellow Joe.

Q What's Joe's last name?

A (No response.)

Q DiPalermo?

A No, if it was that, I would know.

Q You can't recall Joe's last name?

A No, not really.

Q Does he have a nickname.

A Yes.

Q What's his nickname?

A Joe Bis.

Q Pardon me?

A Bis -- B-i-s. That's the nickname.

Q Does he have any other nickname?

A Not that I know of, no.

Please proceed.

Q Where did you stay when you went to Los Angeles?

A I don't recall the name of the hotel.

Q Who did you go with?

A With some girl.

Q Did you pick up the tab?

A Yes.

Q How much did it come to?

A I don't remember.

Q Over a thousand dollars?

A No.

Q For the hotel it didn't come to --

A It was only about three days I was there.

Q How much did it cost you to fly there and fly back?

A I don't remember.

Q You don't recall?

A No.

Q Could it have been a thousand dollars?

A Whatever the plane trip is, that's what I paid.

THE COURT: Look here, he has a right to ask you.

THE WITNESS: I don't rememberthat, your Honor.

Q Is it possible that you took three additional plane trips?

A No, sir.

Q When did you go to L. A.?

A I think it was last year sometime.

Q Was it in 1947?

A I believe so, yes.

Q You can't recall when in 1974, though, is that correct?

A I can't remember exactly, no.

THE COURT: Mr. Amorosa, how long is this going to go on? The jury has not been brought into the courtroom, and the jury arrived at ten and it is now noon. Haveyou an ideaabout how muchmore time you will want to cross examine this witness?

MR. AMOROSA: With the Court's permission, I would like at least another half hour.

THE COURT: I don't know how you could have assured the Court that all the proof would be in by one, even though you did say you thoguht you might be longer than that. You certainly have expended an enormous amount of time, and I dcn't know what you have accomplished, to be very frank with you. I think that you better start crystallizing the balance of your cross.

Q How long have you been associated with that

A A couple of years maybe.

Q Did you pick up the tab for him and yourself?

A No.

Q You went down on vacation?

A I went down a couple of days.

Q A few days?

A Yes.

Q This was in 1974?

A I don't recall that. '73 or '74.

Q Did you go and take any other plane trips in 1973 or 1974 than the ones you have already testified to?

A I don't recall any at all.

Q Is it possible that you did take additional plane trips?

A I tell you the truth, I don't remember. I mean when you say possible, anything is possible, but I don't remember.

Q Is it possible that you took five additional plane trips?

A Five additional?

Q Yes.

A That's impossible.

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I don't remember.

THE COURT: Next question.

Q Could it have been $500?

A I don't recall.

Q Could it have been ten thousand dollars?

A I don't recall.

Q Do you know Murray Zimmerman?

A Do I know him?

Q Yes.

A Yeah.

Q He was a witness here also, right?

A Right

Q He also saw this alleged incident which occurred in Raymond's; is that correct?

A Right.

Q And you recall that he was there at the time, don't you?

A He refreshed my memory.

Q He refreshed your memory as to what happened?

A No, that he was there.

Q Yeah.

Q He approached you on it?

A Well, when he heard about it he told me.

Q

Q I see. Did he tell you from whom he had heard about it?

A No. He was there.

Q Thank you. Is he your friend?

A He is a customer.

Q He is a customer of Raymond's?

THE COURT: He asked you: Is he your friend? What is your answer?

THE WITNESS: He is a customer, your Honor.

THE COURT: Next question.

Q Would you characterize him as your friend?

A I would think so, yes.

Q Have you talked to him on the phone?

A Yes.

Q Have you ever talked to anyone from Merrill Lynch, Pierce, Fenner & Smith?

A From who?

Q The stock brokerage firm of Merrill Lynch, Pierce, Fenner & Smith?

A I don't recall who they are.

Q Do you own any stocks?

A Not that I know of.

MR. J. PANZER: I can't hear the answer.

THE WITNESS: Not that I know of. Stocks?

Q Yes, stocks or bonds.

A About maybe 15 years ago I started to take out mutual funds for my three children for $10 apiece, and that is all I paid, and I still get letters from them, but that is all I paid, was $30, and I could not pay it, could not afford it.

Q That was 15 years ago?

A Yes, maybe a little more.

Q Have you called anyone at a stock brokerage firm in the last year?

A Not that I know of.

Q You don't recall?

A No.

Q Well, didn't you have this phone number in your possession at the time of your arrest in this case?

A Merrill Lynch?

Q The stock brokerage firm, Merrill Lynch? You don't recall having that phone number?

A I could have it. Maybe they are customers in the place.

Q Customers of Raymond's?

A Yes.

Q Have you done any business with the Security Pacific International Bank, located at 319 West 48th Street, in New York?

A Pacific who?

Q Security Pacific International Bank.

A 48th Street? Not to my recollection, no.

Q You may have, though? Is that correct?

A I don't recall any.

Q Well, you may have?

A I would say no, I don't think so.

Q So your answer is no, you did not have any business dealings with them?

A Not that I recall, no.

Q You didn't buy any stocks in your own name or

Iris de Jesus name in the last two years?

A No.

Q Do you still have the '73 Cadillac?

A Yes.

Q What kind of a car did you have prior to that?

A I didn't have any.

Q You didn't have an automobile?

A Did I drive one or did I own one?

Q You did own an automobile prior to that?

A How long prior to that.

Q Prior to the time you got the '73 automobile?

A How far back do you want to go?

Q Immediately prior thereto?

A No.

Q You could not afford one?

A I did not have one.

Q You could not afford one?

A I did not have any.

Q Could you afford one?

A I don't recall.

Q Where does Iris deJesus work?

A Nowhere right now.

Q And she lives with you? Is that correct?

A That is my wife.

Q. She is now Mrs. DeLutro?

A That is right.

Q When were you married?

A September 14th of this year.

Q Of this year?

A Yes.

Q Did you have a reception?

A No, just a little small party; no big reception; just a small dinner.

Q At Raymond's?

A That is right.

Q Your son was also married recently?

A That is right.

Q Where was he married?

A Cotillion Terrace.

Q Is that a restaurant?

A That is a catering place.

Q Did you pay --

A No.

Q -- the expenses?

A No.

Q You testified when Verzino came into the bar early in November he went over and started talking to some man. Do you recall that?

A You are talking about the first time he came in?

Q Do you recall testifying, sir, that Verzino came in to Raymond's some night early in November, 1973? Do you recall testifying to that on direct examination? Yes or no?

A Yes.

Q Where did he go after he came in?

A After who came in?

Q Verzino.

A Where did Verzino go?

Q Yes.

A He went with me to the bar on 30th Street; he took me over there.

Q He came in, he met with you, and you went over to 30th Street?

A No.

Q Let's have it then.

A Verzino was in the bar talking to this fellow when I walked in. I didn't go directly to him. I went past him; I went down the end of the bar; I seen a few people, came back, said, "Hello." I came back to the middle of the bar; this girl Trixie was there; I said hello to her; I looked up. Tony was there alone.

The guy had left. Tony, he says hello to me; he said to the bartender to give me a drink; I acknowledged the drink. I don't know if I finished the drink or not; but Tony called me over. I went over there. He says, "Who is the girl," or "Who is the broad," whatever, referring to the girl Trixie --

THE COURT: We don't need all of this recittal all over again.

The question was very simple. I don't know why we need to go into that again. Will you put your question again, please, so he will know how far he needs to go to answer it?

Q Did you know the person Verzino was with at the bar?

THE COURT: Yes or no.

A No.

Q You never seen him before in your life?

A Complete stranger.

Q You knew Verzino was a junk dealer?

A I was not sure, but I never asked him.

A You never asked him?

A But I see the way he was spending --

MR. J. PANZER: He was answering the question and Mr. Amorosa interjects.

THE COURT: Yes. Give him a chance to finish.

Q You knew Verzino was in Atlanta for selling heroin?

A I was not sure about that, either.

Q I see. You knew that he was in Atlanta?

A Yes.

Q But you didn't know for certainty that he was there because he was selling heroin?

A I was not sure what he was there for.

Q So when he walked into your bar or into Raymond's that night early in November and went over to speak to that guy, you didn't have any suspicions at all that something might be going on in your presence? Is that correct?

MR. J. PANZER: I object to the form of that quesion. It calls for the operation of the witness' mind.

THE COURT: Objection overruled.

A I would not care what they were talking aout, so long as I am not a part of it.

Q I see. Thank you. You could not care if they were talking about heroin?

A I could not care what anybody was talking about. What has it to do with me? It is none of my business.

Q It has nothing to do with you?

MR. J. PANZER: I object to the colloquy between

mmbr 8 DeLutro-cross

Mr. Amorosa and this witness.

Q Do you recall testifying on direct examination that when you saw this person w'h Verzino you made it a point not to walk over to him? Do you recall that?

A Yes, I made it a point.

Q You made it a point not to walk over and listen to what they are saying?

A I make it a point not to walk over and talk to anybody unless I am called over.

Q You had no suspicions what they were doing?

A I had no idea.

Q You saw that person again that night?

A Right.

Q You saw him although he was in a car?

A Right.

Q And then Verzino told you after you both saw this man, "You don't need me, Tony, to walk back to Raymond's." Is that what Verzino said?

A No, he said, "Go ahead. I will see you."

Q And you said, "I will see you."

A Yes.

Q And you walked on?

A Yes.

Q And you didn't come turn back?

A Yes.

Q Do you recall testifying to that?

A Yes.

Q Did you know at that time Verzino was in a narcotics transaction that night?

A No, I had no idea what they were doing.

Q Do you know why Mario Perna was in Atlanta?

A No, I never knew Mario Perna.

Q You had heard that Mario Perna was in Atlanta?

A Yes.

Q Where did you hear that?

A He told me.

Q Who?

A Verzino.

Q When did he tell you that?

A When I first met him.

Q How long have you known Anthony Verzino?

A About 15 years, 14 years.

Q You met him in various bars?

A Right.

Q In the Bronx and in New York?

A No, neverin the Bronx.

Q Only in New York?

A In Mid Manhattan.

Q Are you still getting $50 a week from commissions from the florist shop?

A Yes.

Q You have been getting that since 1973?

A No, 1973.

Q In 1973, though, you made about $10,000?

A I am not too sure about '74; '73, about the flower shop -- that I don't know.

Q The question is --

MR. J. PANZER: Hewants to continue his answer and he does not let him finish.

THE COURT: I thought he answered it. Next question.

MR. J. PANZER: He wanted to finish.

THE COURT: You can bring it out on redirect, if you think it necessary.

Q Did you ever tell anyone over the phone in Raymond's sir, that a person by the name of Joey owed you a sum of money and that she should come to Raymond's and pay up?

MR. J. PANZER: Objection. Fifth Amendment privilege.

THE COURT: Objection sustained.

Q Did you ever tell anyone over the phone from

Raymond's that Johnny has to pay the money that he owes you, just like everybody else?

MR. J. PANZER: Same objection; same grounds.

THE COURT: Same ruling. The Court recognizes the ground asserted.

MR. AMOROSA: No further questions.

THE COURT: Do you want any redirect?

REDIRECT EXAMINATION

BY MR. J. PANZER:

Q When you went to Atlanta, will you tell the Court why you want to Atlanta on all the occasions?

A To visit my brother.

Q Was he in jail?

A Yes.

MR. J. PANZER: No further questions.

THE COURT: You didn't want that brought up before the jury?

MR.J. PANZER: Yes, I want it brought up.

THE COURT: You withdraw your objection?

MR. J. PANZER: I withdraw my objection.

MR. AMOROSA: I believe it is in the record already. I have no further questions.

MR. J. PANZER: No questions.

(Witness excused.)

* * * * *

mmbr 2

* * * * *

ANTHONY DE LUTRO, resumed.

THE COURT: Mr. DeLutro, you are under oath and you are continuing your testimony under oath.

THE WITNESS: Yes, sir.

CROSS EXAMINATION (Continued)

BY MR. AMOROSA:

Q Mr. DeLutro, do you deny that you sold narcotics

or purchased narcotics from anyone from January 1, 1973 until July 10, 1975?

A Yes, sir.

Q You deny that?

A Yes, sir.

Q Do you deny also that you spoke to anyone in that period of time about your purchasing narcotics from him or his purchasing narcotics from you?

A Yes sir.

Q On or about December 24, 1974, did you speak to Charley Brody with respect to narcotics?

A No, sir.

Q Do you recall a conversation you had with Charley Brody on December 24, 1974, while you were at Raymond's?

A Do I remember the conversation?

Q Do you recall the conversation you had with Charley Brody on December 24, 1974, while you were at Raymond's?

A Yes, sir.

Q Was that conversation in English?

A I don't recall.

Q Do you know Ernest Malizia?

A No.

Q You don't know the name Ernest Malizia?

A No.

Q Not mentioned on direct examination Verzino introduced you to a person named Ernie? Do you recall that?

A Yes, sir.

Q He introduced you in a bar on the southeast corner of 30th Street and 2nd Avenue in New York; is that correct?

A That is right.

Q Did you ever before in your life meet thatperson?

A No, sir.

Q Did you know Frank Pallatta?

A No, sir.

Q You never met Frank Pallatta in your life before you met him in this courtroom?

A That is right.

Q Do you know Joseph Magnano?

A I know him now.

Q Had you ever met with Joseph Magnano prior to the time you began the trial of this case?

A At the arraignment, when we were arrested.

Q Did you ever meet him?

A No, sir.

Q Did you ever speak with Joseph Magnano prior to the time you saw him at the beginning of the case?

A No, sir.

Q Do you know Anthony Soldano?

MR. J. PANZER: Your Honor, there was another question on page 19, "Was that the only time you spoke in your life with Joseph Magnano other than when you spoke to him during the course of this trial?"

He didn't ask him that question.

MR. AMOROSA: What line?

MR. J. PANZER: Line 9

MR. AMOROSA: All right, I will ask the question.

THE COURT: May I see it?

MR. AMOROSA: I will ask the question.

Q WAs that the only time you spoke in your life with Joseph Magnano, other than speaking with him during the course of this trial?

A Yes.

Q Do you know Anthony Soldano?

A No, sir.

Q Did you ever speak with Anthony Soldano prior to September 22, 1975?

A No, sir.

Q Did you ever meet with Anthony Soldano prior to September 22, 1975?

A No, sir.

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Q What is your function at Raymond's Restaurant?

A Like a manager there.

Q Are you paid?

A No, sir.

Q Have you ever been paid by Raymond Caramano for any work that you have done at Raymond's?

A No, sir.

Q Have you ever asked him to be paid?

A No, sir.

Q Are you there nightly?

A Yes.

Q Is Caramano there nightly?

A No, sir.

Q Who are the bartenders?

A Well, in the daytime you got a fellow by the name of Murphy; in the nighttime you got Rossi and Raymond, but not every night.

Q Caramano works as a bartender?

A Yes, sir.

Q And you have a managerial function? Is that right?

A Yes, sir.

Q What is the phone number at Raymond's, of the public phone on the wall?

A 679-9418.

Q Do you recall Rossi's testimony initially that that number was 964-1892?

A Yes, sir.

Q Whose number is 964-1892, if you know?

A I have no idea.

Q How many other phones are in Raymond's besides the wall phone with that number?

A Which number?

Q How many phones are in Raymond's besides the wall phone?

MR. AMOROSA: I think we can agree on that question, can't we?

MR J. PANZER: You left out the bad number.

MR. AMOROSA: I did.

Q How many other phones are in Raymond's besides the wall phone with that number, referring to the number 679-9418?

A One more number.

Q Where is that phone located?

A At the end of the bar.

Q Does that have a different number on it, or does it have the number 679-9418?

A Well, that has a different number, but there is also on top of the bar a number the same as the other phone

so the bartender can pick it up.

Q What is the number on that phone?

A The one I mentioned, the same, the private number, the one he got behind the bar on the wall, 889-4945 or 4549.

Q Did you ever use that phone?

A Once in a while.

Q That is not Caramano's personal private phone?

A No.

Q You used that phone frequently?

A No.

Q Does Caramano use it frequently?

A No.

Q Does Caramano have nights off?

A Yes.

Q When is that?

A Sometimes he is off Saturday, and if he is not off Saturday he is off Sunday, Monday, Sunday and Monday.

Q And when he works he works as a bartender?

A No.

Q He tends bar?

A Yes, sir.

Q How many employees in Raymond's?

A About eight.

Q Do you know how many employees there are currently

in Raymond's approximately?

THE WITNESS: What does he mean currently?

THE COURT: Every day. Right now. At present.

A I would say about eight.

Q Do you know how many employees there were in Raymond's in November, 1973?

A I would say approximately the same.

Q Are they the same employees, give or take one or two?

A Yes, sir.

Q You said on direct examination or cross examination last Friday that Raymond confided in you or had conferences with you? Do you recall that testimony?

A He don't confide with me every time.

Q He both confides in you and confers with you?

A He does at times.

Q How much money did he pay for Raymond's?

A I have no idea

Q [illegible]

A No, sir.

Q Whom did he buy it from?

A I have no idea.

Q He didn't tell you that?

A No, sir.

Q Who is on the license? Do you know that?

A Yes, sir.

Q Who is his attorney?

A Max Frongold.

Q Did you ever employ Max Frongold in your life?

A Yes.

Q Did you everpay him money?

A No, sir.

Q But he worked for you?

A He did work for me, yes, sir.

Q Did he ever do services for you?

A Yes.

Q Did you ever pay him money for those services?

A No, sir.

Q Now, who owns the Cafe Expresso Shop, sir, in which you work?

A I do.

Q You own it?

A Yes, sir.

Q Is it a corporation?

A I am not sure. I don't think so. But I am not too sure about that.

Q You are not certain whether you incorporated?

A Right.

Q Now, with respect to the place from which you get the $50 a week in commissions, will you tell us again what that is called?

A I send customers there; they buy flowers there and he gives me a commission of $50 a week.

Q What is the name of that shop?

A Charles Anthony Flower Shop.

Q It is your testimony that you are not a stockholder in the corporation that owns that shop?

A Right is right.

Q Do you own any land interest or any other type of interest in Nevada?

A No, sir.

Q What property do you own?

A A 1973 Cadillac.

Q When did you buy that?

A I believe it was in June of last year, 1974.

Q Did you pay cash for it?

A No, sir.

Q Did you ever purchase a car for another person?

A No, sir.

Q Do you know a person by the name of Iris DeJesus?

A That is my wife.

Q What kind of car does she own?

A She don't own any.

Q She owns none in her own name?

A No, sir.

Q You never purchased a car for her?

A No, sir.

Q Does she live with you?

A Yes, sir.

Q She lives with you in Queens?

A Yes,sir.

Q Did you ever tell the car and registration board that you live in New Jersey?

A Yes, sir.

Q Did you ever tell licensing authorities for autobiles in New York you lived on Mulberry Street in New York?

A Yes, sir.

Q When did you tell them that, sir?

A I am livingthere all my life; they always knew that address.

Q When did you tell them that?

A What are you talking about? The New York License?

Q Yes.

A Well, they know I have been living there all my life; I nevr changed it as far as they are concerned.

Q Yet you live in Queens? Is that correct?

A Now I do.

Q Do you have an accountant?

A Savings account, no.

Q Do you have an accountant?

A An accountant does my books, yes, sir.

Q Do you pay your accountant?

A Yes, sir.

Q Does he prepare your income tax returns for you?

A Yes,sir.

Q Did he prepare your 1973 income tax return?

A That was somebody else that did that. He was not an accountant -- one that files your income tax for you.

Q Do you have another accountant who prepared your 1973 income tax return?

A 1973? That is the one I just answered.

Q What is your answer?

A The one on 44th Street and Lexington Avenue. I don't recall his name.

Q Did you prepare your own 1973 income tax return?

A No, sir.

Q Who prepared your 1973 income tax return?

A I forget his name, but he is on 44th and Lexington Avenue.

Q You supplied him with all the relevant information, didn't you?

A Yes, sir.

Q In 1974 you had an accountant?

A Yes, sir.

Q When did you first get your accountant?

A At the beginning of this year.

Q In 1975?

A Yes, sir.

Q So you didn't have an accountant who prepared your income tax return in 1974? Is that so?

A I had a tax -- what do you call them -- one that makes out the tax for you. He is not my accountant; he was not my steady accountant.

Q You prepared your own 1974 income tax return?

A No, sir.

Q Who prepared it?

A Harvey Gordon.

Q Who is Harvey Gordon?

A He is my accountant.

Q Did you hire him to prepare your 1974 income tax return?

A Yes, sir.

Q How much did you pay him?

A $100.

Q Do you have a bank account?

A Savings, no.

Q You have no checking account in your own name?

A Checking account, yes.

Q Where?

A Rego Park.

Q What is the name of the bank?

A I don't know if it is First National or National something; it is Rego Park.

Q Did you make out an application to get that bank account?

A I believe so.

Q Do you have a savings account?

A No, sir.

Q You never had a savings account?

A No, sir.

Q Did you have a checking account in 1973?

A A checking account in 1973? I think it was a business account for the store, the jewelry store.

Q Did you have a checking account in 1974?

A I don't think so.

Q You were signing checks?

A Yes, sir.

Q And that was at the store?

A Yes, sir.

Q Who was on the account, that is, who got the account? Was it a human being or a corporation?

A A corporation.

Q What was the name of the corporation?

A Beautiful Things, Incorporated.

Q You had the power to sign checks?

A Yes, sir.

Q Did anyone else have the power to sign checks besides you?

A I signed all the checks.

Q What was your position there at that shop in 1973?

A I was like a salesman.

Q Were there any other salesmen?

A I think one more, yes.

Q Were there any other employees?

A No.

Q What was the largest amount ofmoney in that checking account in 1973 to your knowledge? To your recollection?

A I have no idea.

Q How much money was in the checking account in

1973 in approximately November or December?

A I don't recall.

Q Could it have been as much as $50,000?

A Never.

Q $10,000?

A Never.

Q $5,000?

A Possibly, but I'm not sure.

Q We are talking about 1973 here?

A Right.

Q Did you have a safe deposit box in your name?

A No, sir.

Q Did you have one in your own name in 1974?

A No, sir.

Q Have you ever had access to a safe deposit box?

A I don't even know how to go about to get one.

Q Does Iris DeJesus, your wife, have a safe deposit box?

A No, sir.

Q Your testimony then is that she does not have a safe deposit box?

A That is right.

Q She didn't have one in 1974?

A No, sir.

Q She didn't have one in 1973?

A No, sir.

Q Did your daughter get married in 1974?

A Yes, sir.

Q Where?

A Leonard's, Great Neck.

Q Was that where the reception was?

A Yes, sir.

Q Is that a restaurant?

A A catering place.

Q Where is that again?

A Great Neck, Queens.

Q Is that a restaurant?

A Well, they serve food there; it is a catering hall.

Q Where is that again?

A In Great Neck, Long Island.

Q Were you there?

A Yes, sir.

Q Did you pay the bill?

A No, sir.

Q Who paid the bill?

A I have no idea.

Q How many people were there?

A About 800.

Q No idea and you say about 800?

A About 800.

Q You didn't pay the bill?

A No, sir.

Q You don't know who paid the bill?

A Well, I mean not that I don't know; I don't know how much they paid; they paid it themselves; they took care of it, the kids took care of it themselves. They worked and they saved for it and they paid it, and also from the gifts that they got.

Q Well, did you ever have a conversation with anyone in which someone told you that?

A No, sir.

Q You never asked your daughter --

MR. J. PANZER: Your Honor, there is no question, "Did you ever have a conversation with anyone who told you that?" I don't see that question.

MR. AMOROSA: I have tried to consolidate two or three questions; otherwise, it would not follow logically.

THE COURT: Well, when you come to a difficulty, either take it up with me or lean over and let counsel know. If he has consolidated it, I can see no harm in it, Mr. Panzer. If you want him to give every bit of it, we will give every bit of it.

MR. PANZER: Yes, I want to get it. The next question is, "You never asked your daughter."

THE COURT: Just do it the way it appears, then.

Q You never asked your daughter?

A No, sir.

Through the gifts they paid it?

A Through gifts, through the father.

MR.J. PANZER: Your Honor --

MR. AMOROSA: That is the next question, page 44.

MR.J. PANZER: I have not got page 44.

THE COURT: Take a look at Mr. Amorosa's page.

Q Through the gifts they paid it?

A Well, I would say that it helped a lot.

Q What did it come to, sir, the bill? What was the bill?

A I have no idea.

Q Was it over $50,000?

A I have no idea.

Q No where near $50,000?

A I don't think so.

Q Did you ever speak to your daughter with respect to it?

A No, sir.

Q Did you speak to her father-in-law with respect to it?

A No,sir.

Q How about her husband?

A No, sir.

Q So you had no knowledge as to who paid it? Is that correct?

A That is correct.

Q It is just an assumption on your part; is that correct?

A Well, I am assuming that the father paid part of it.

Q You never spoke to anyone about it? Is that correct?

A I don't recall.

Q You never talked to anyone about who paid the bill, did oyou?

A No,sir.

Q Is it that you don't recall?

A I don't recall what?

Q About speaking to someone with respect to the bill?

A No, I didn't talk to anybody.

Q So you may have talked to someone about the bill?

3500 Material.

"My brother contacted the locksmith and for a fee of $50 the locksmith made a key from the drawing I had given to Yvonne. The locksmith took approximately one day to make the key. My brother then gave the finished key to my wife, Crucita, and she put it in a large greeting card approximately eight inches by eleven inches in size, which was then placed in an envelope and joined by approximately one dozen additional similar greeting cards in envelopes, which were all then placed in a large manila envelope. My wife then brought that package containing the key to the office of a Catholic priest, known to me as "Father John," whose office is in lower Manhattan. Father John is a regular visitor to the Federal House of Detention and is between 50 and 60 years old, approximately 5'5", medium build, grayish black hair, balding. He wears glasses. My wife, upon delivering the package to Father John, asked him to deliver it to me in jail and he did so, leaving the package on my bunk. It is entirely possible that Father John did not have any knowledge of the key.

"At the earliest opportunity I tried the key in the first door and it did not work. I then realized that the dimensions that I had given to Yvonne had been wrong. I had mistakenly thought that the dimensions of the teeth of the key were one-eighth of an inch whereas they were actually one-sixteenth of an inch.

"Through trial and error and the use of an additional scrap of brass supplied to me by Fiocconi I then made a key to the first door that worked.

"Attempts by me to duplicate the second and third door keys were unsuccessful, as I had mentioned in my earlier statements.

"After Correction Officer Giannino was successfully approached by inmate DeBeridictus and inmate Nelson Garcia, he supplied an impression in styrofoam of the second door key approximately six weeks prior to the escape. I received the impression, wrapped the impression in blank white paper and placed it in an unfranked envelope, white in color, approximately ten inches long and four inches wide. I then gave that envelope, which I had sealed and which was not addressed, to Father John with instructions for him to give it to my wife who was, then in Mt. Sinai Hospital located on Fifth Avenue in Manhattan. This occurred in early August, 1974, to the best of my recollection. Father John gave the unaddressed envelope to my wife in the hospital and my brother Pasquale went to the hospital and picked

3500 Material.

it up. He then contacted the locksmith, who charged $100 to make a key from that impression. In approximately one day the key was completed and given back to Pasquale, who in turn gave it to my wife, who then followed the same procedure as I earlier described by placing the key in a large greeting card, which was placed in a larger envelope along with other greeting cards. My wife instructed my brother to bring the cards to Father John's office, which he did, but upon handing that package to Father John, Father John refused to accept it because he felt a hard object that felt like metal. My brother offered Father John money to take the package to me and FatherJohn refused. My brother then took the package back to my wife in the hospital at which time my brother and my wife had an argument concerning me and following that argument my brother either took the package with the key inside, or just the key itself, and gave it to Yvonne.

"As soon as I found out about Father John's refusal and informed Fiacconi and Luppes, we decided we must find another way to get the key inside. Luppes and Fiacconi suggested that the key be given to Giannino to bring in but I refused.

"The day following Father John's refusal, FatherJohn came to the prison and confronted me on the third floor and told me he was very upset that my brother had attempted to give him a package which contained a hard object the night before. Father John told me also that my brother offered him money and then Father John told me to not ask again for him to bring in anything from anybody and also told me that if I wanted anything, he would buy it and bring it in himself. Father John told me that he did not know what was in the package brought to him by my brother and told me that he did not know what my brother was trying to do. He also said that he has prayed that he has not done anything wrong in the past, at which time he referred to the first package containing cards which also contained the key to the first door.

"Following this occurrence, Giannino supplied another impression of the key for the second door with a tracing and dimensions and at the same time supplied impressions for the key to the third door. Prior to this time, $1,500 had been delivered and placed in Giannino's car trunk as I indicated in earlier statements. The $1,500 was delivered by a man known to me as Ponzo, who is a white male, of Italian descent, approximately 5'4", approximately 35 years of age, black hair, stocky build, and who resides in the vicinity of 116th Street and First Avenue in New York City. He works at the Delightful Restaurant, which is located at the corner of 116th Street and First Avenue in New York City. The restaurant is owned by members of Ponzo's family. Ponzo delivered that money following instructions given to him by Harry Luppes, whose true name is Ernest Malizia one of the men who escaped with me. Ponzo is

3500 Material.

Malizia's brother-in-law. Ponzo was supplied with the trunk key of Giannino's car by means unknown to me. Malizia took these impressions, wrapped them in blank white paper and placed them in an unfranked white envelope, the dimensions of which were approximately ten inches long by four inches wide. Malizia gave the envelope to Father John with instructions to hold it at his office for his son Richard Malizia, also known as Ricky, to pick up. Richard Malizia lives in Nanuet, New York with his mother, and is approximately 21 years of age, 5'7" or 5'8", slim build, black hair.

"As I mentioned, Ricky was supposed to pick up the envelope containing the impressions at Father John's office but for some reason unknown to me he was unable to do so. My brother Pasquale was unable to pick it up because of hisprior contact with Father John and because Father John had refused the package with the key in it. Yvonne then was instructed by me to go to Father John's office and pick up the envelope containing the impressions, which she did.

"Yvonne then contacted my brother who told her to bring the impressions to the locksmith and gave her instructions how to get to the locksmith's location. She followed his instructions and the key to the third door was made for a price unknown to me. My brother picked the key up from the locksmith and give it to Yvonne. I want to point out that because Giannino had supplied a second impression of the second door key the locksmith made another key for the second door and, therefore, my brother picked up both keys, that is, to the second door and the third door. I also want to point that to the best of my knowledge my brother or Yvonne was holding the second door key made by the locksmith and which was in the package refused by Father John.

"Yvonne gave the two keys plus at least two brass blanks also suppled by the locksmith to Ponzo or Ricky. Prior to giving them to either Ponzo or Ricky, Yvonne wrapped all of the keys together, which now included the key to the second door and which was wrapped in the package that Father John refused, another key to the second door, and a key to the third door, at least two brass blanks and a round and a flat file. Yvonne wrapped all of these items in white adhesive or masking tape and Ponzo put the package in the trunk of Giannino's car.

3500 Material.

"I wish to point out at this time that Ricky was supposed to put either the money or the white package containing the keys and files in the trunk of Giannino's car but on the night he was supposed to do that Giannino's car was parked on the corner of 11th Street and West Street, which was in view of the television cameras and, therefore, no attempt was made that night by Ricky. Ponzo, therefore, accomplished both tasks on different dates.

"After viewing three keys which Agent Holiday told me were recovered at the Federal House of Detention during the week of October 14, 1974, I can say with certainty that the longest of the three keys which also has a hole in one end was made by the locksmith and was designed for the second door. That key did not work because the channels were off center and I forced the key into the lock which caused the key to split and, therefore, became useless. Another of the three keys, the one with teeth on both ends, also was made by the locksmith, that is, one end was made by the locksmith and that was designed for the first door but as I mentioned earlier the teeth were one-eighth inches apart and should have been one-sixteenth inches apart. The other end of that key was an attempt by me and Fiocconi to make a key for the second door. The smallest of the three keys showed to me by Agent Holiday was an attempt made by Fiocconi at the third door key, to the best of my recollection, and the metal used was received in the form of a blank supplied by the locksmith.

I have read the above statement consisting of this page and five others and declare that they are true and factual to the best of my knowledge

Mario Biaggi

Edward J. Holiday, SA, FBI, NY NY 10/22/74
Robert F. Kamuda, SA, FBI, NY, NY 10/22/74.

505a

3500 Material.

INTERROGATION; ADVICE OF RIGHTS

YOUR RIGHTS

Place N.Y. N.Y.
Date Oct 13, 1974
Time 3:05 pm

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed Mario Perna

Witness: Edward J. [illegible], SA, FBI, NYNY 10/13/74

Witness: Thomas J. Walker, SA, FBI, Jay Jay 10/13/74

Time. 3:12 pm

STATEMENT

"I, Mario Anthony Perna, have been made aware of the identity of the FBI Agents whose names appear as witnesses on this page and of the nature of questions they desire to ask me which relates to my escape from the Federal House of Detention in New York City on September 22, 1974, and prior events connected to that escape.

M.P. M.P.

3500 Material.

M.P. "I make the following statement freely and voluntarily, and this statement is to be an addition and further clarification of a statement I made to SA Edward Holiday on the evening of October 11, 1974. M.P.

"Concerning Correction Officer Giannino, who aided me and the other six escapees, I want to say that an inmate at the Federal House of Detention by the name of John De Benidictus, also had had conversations with Giannino during the four months prior to the escape and was actually the person who informed Nelson Garcia that he thought Giannino could be approached seriously concerning an escape attempt. De Benidictus had been on friendly terms with Giannino, and Giannino had been bringing food into the jail at De Benidictus' request. De Benidictus then arranged a meeting between Giannino and Nelson Garcia, at which time a friendly and not serious conversation took place, at which time Garcia jokingly asked Giannino what it would take to get Giannino to open the doors, to which Giannino replied '$200,000'.

"A short time following that conversation, Giannino was transferred to the Control Room, and De Benidictus then arranged a subsequent meeting between Garcia and Giannino, which took place in De Benidictus' presence, and it was at this meeting that the terms regarding money to be paid to Giannino, and which appear in my earlier statement, were discussed and finalized.

"Subsequent meetings between Giannino and Garcia all were held in De Benidictus' presence, and those meetings, as my earlier statement reads, also related to obtaining impressions of the second and third doors, which we would have to go through to escape. De Benidictus obviously had full knowledge of all negotiations between Garcia and Giannino and was aware that I had completed construction of the second door key made from an impression supplied by Giannino. De Benidictus was not aware that I had successfully constructed a key which opened the first door which was made, as I earlier stated, prior to the first negotiation with Giannino regarding impressions.

"Approximately four to five days before the escape, De Benidictus was made aware of the existence of the first door key but was never told about the third door key because I did not trust him and felt that he might be setting us up. De Benidictus told

M.P. M.P.

3500 Material.

M.P.
Garcia that he wanted to escape with us, and he also M.P.
discussed that fact with me, but I put him off because
I did not trust him. A few days prior to the escape
we let De Benidictus know that we had tentative plans
to escape on September 23 or September 24, and I also
told him that I would probably have the third key made
by them. Actually, I already had it made.
M.P.

"On the day of the escape, I did not tell
De Benidictus of our escape plans nor did any of the
other escapees because, as I said before, we did not
trust him.

"The reason I did not mention De Benidictus'
name before now was due to the fact that I assumed he
had already given the FBI information about his knowledge
of the escape and the escape plans involving Giannino."

I have read the above statement consisting
of this page and two others and declare
that they are true and factual to the
best of my knowledge.

Mario Rivera

Edward J. Holiday, SA, FBI, NYNY 10/13/74
Kenneth T. Walker, SA, FBI, NY. NY 10/13/74

-3-

Judgment and Probation/Commitment Order.

United States of America vs.

United States District Court for

DEFENDANT: ANTHONY DeLUTRO

SOUTHERN DISTRICT OF NEW YORK

DOCKET NO.: "S" 75 Cr. 607 (IBC)

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH: December DAY: 3, YEAR: 1975

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Joseph Panzer, Esq. (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [ ] NOT GUILTY

FINDING & JUDGMENT

There being a ~~finding~~ verdict of { [ ] NOT GUILTY. Defendant is discharged; [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly, did distribute and possess with intent to distribute a schedule I narcotic drug controlled substance, to wit, heroin. (Title 21, Sections 812, 841(A)(1) and 841(b)(1)(A) U.S.C.); and conspiracy so to do. (Title 21, Section 846, U.S.C.).

SOUTHERN DISTRICT OF NEW YORK

509a

Judgment and Probation/Commitment Order.

as charged in Counts 1 and 8

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER

TWENTY-FIVE (25) YEARS on each of Counts 1 and 8 to run concurrently with each other.

The defendant is placed on SPECIAL PAROLE for a period of SIX (6) YEARS pursuant to Title 21, United States Code, Section 841, U.S.C., to commence upon expiration of confinement.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

DISTRICT COURT

FILED

DEC 4

BEST COPY AVAILABLE

Notice of Appeal.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA — Notice of Appeal

75 Cr 687

-vs-

ANTHONY DeLUTRO

Defendant.
- - - - - - - - - - - - - - - - - x

Notice is hereby given that Anthony DeLutro, defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit, from the judgment convicting him of conspiracy to sell and possession and sale of narcotics in violation of sections 812, 841 (a) (1) and 841 (b) (1) (A) of Title 21, United States Code, entered in the United States District Court for the Southern District of New York, Cooper, J., on the 3rd day of December, 1975, and from each and every part of said judgment of conviction.

Dated, December 10, 1975

Yours etc.,

H. RICHARD UVILLER
Attorney for Defendant
435 West 116th Street
New York, N. Y. 10027
(212) 280-4160
(914) 534-9202

To: THOMAS J. CAHILL
United States Attorney
Southern District of New York

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

v.

JOSEPH MAGNANO, a/k/a "Joe the Grind", FRANK PALLATTA, a/k/a "Bolot", and a/k/a "Nose", RICHARD BOLELLA, ANTHONY DeLUTRO, a/k/a "Tony West", ANTHONY SOLDANO, a/k/a "Tony",
Defendants-Appellants,

LOUIS MACCHIARGLA, a/k/a "Red Hot", MICHAEL CARBONE, DOMINIC TUFARO, a/k/a "Donnie Boy", FRANK FERRARO, a/k/a "Skooch", CARMINE MARGIASSO, a/k/a "Charlie", JOSEPH MALIKIA, a/k/a "Patsy Pontiac", ERNEST MALIZIA, FRANK CARAVELLA, JOHN GWYNN, WILLIAM CHAPMAN, a/k/a"Chappy", ST. JULIAN HARRISON, FRANK LUCAS, GERARD CACHOLAN, a/k/a "Coco", ROBERTO RIVERA, and GABRIEDL RODRIGUEZ, a/k/a "Cass", a/k/a "Cassanova",
Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

Rose Rinella, being duly sworn, deposes and says that she is over the age of 18 years, is not a party to the action, and resides at 951 E. 17th Street, Brooklyn, New York, 11230
That on March 2, 1976, she served 1 copies of Appendix and 2 copies of Brief for the Defendant-Appellant, Anthony DeLutro,
on

ROBERT B. FISKE, JR.
US Attorney,
Southern District of New York,
Attorney for Appellee
1 St. Andrew's Plaza,
New York, New York 10007

GRETCHEN WHITE OBERMAN,
277 Broadway,
New York, New York.

Gilbert Epstein,
100 Church Street,
New York New York.

Robert Blossner, Esq.,
250 Broadway,
Jeffrey Hoffman, Esq.
233 Broadway,
New York, New York.

John Gwynn,
U.S. Penitentiary,
Lewisburg Pa,
17837

by depositing the same, properly enclosed in a securely-sealed, post-paid wrapper, in a Branch Post Office regularly maintained by the United States Government at 350 Canal Street, Borough of Manhattan, City of New York, addressed as above shown.

Rose Rinella

Sworn to before me this
2nd day of March, 19 76

John V. D'Esposito

JOHN V. D'ESPOSITO
Notary Public, State of New York
No. 30-0932960
Qualified in Nassau County
Commission Expires March 30, 1977